

From: [Utech, Dan](#)
To: [Fugh, Justina](#)
Subject: Re: confirming the extension of time to file your disclosure report
Date: Wednesday, February 17, 2021 7:31:44 AM

Thanks Justina. I can easily provide a list of the relevant holdings if that would be advisable, given that Andrea's confirmation is likely to take another 6-8 weeks.

To give you a sense of the universe: (b) (6)

[REDACTED]

On Feb 16, 2021, at 10:32 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Hi there,

Just a note to confirm that I gave you a 45 day extension of time to file so that you can coordinate with your spouse's filing at another federal agency. Your report is now due 4/5/21.

We won't be able to give you any meaningful insights into your recusal issues until we have more details about (b) (6), even though: (a) we understand that most of the assets may be under the regulatory exemption levels for participating in specific party matters or matters of general applicability; and (b) your spouse will be signing an ethics agreement that indicates she will divest of these assets anyway. So we know what the remedy will be for the conflicts (or perceived conflicts), but until the divestiture, you may have recusal issues here at EPA, depending on the assets and your ownership level. We'll look forward to seeing your report!

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Fugh, Justina](#)
To: [Mosley, Ferne](#)
Subject: RE: Dan Utech's 278
Date: Monday, March 22, 2021 11:08:00 AM

You're right! I think I told him but I don't know whether he remembers!

From: Mosley, Ferne <mosley.ferne@epa.gov>
Sent: Monday, March 22, 2021 11:03 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: Dan Utech's 278

OK, thanks. He will have to do a 278T for those, so hopefully, he knows that.

Ferne L. Mosley, Attorney-Advisor
U.S. Environmental Protection Agency
Ethics Office/Office of General Counsel
William Jefferson Clinton Building North, Room 4113A
1200 Pennsylvania Ave, NW
Washington, DC 20460
(202) 564-8046 (desk)
(202) 306-2998 (mobile)
mosley.ferne@epa.gov

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Monday, March 22, 2021 11:01 AM
To: Mosley, Ferne <mosley.ferne@epa.gov>
Subject: Dan Utech's 278

Hi Ferne,

Dan sent me a note about his 278 that I answered and, while I was at it, peeked at his report (see below). Since you'll be reviewing it when he actually submits it, I got the link to his wife's ethics agreement so you can see what stock she's already agreed to sell via CD if confirmed.

See

[https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/D9C8CD57A07A72148525868A0032D927/\\$FILE/Palm,%20Andrea%20%20finalEA.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/D9C8CD57A07A72148525868A0032D927/$FILE/Palm,%20Andrea%20%20finalEA.pdf) .

Justina

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From: Fugh, Justina
Sent: Monday, March 22, 2021 10:46 AM
To: Utech, Dan <Utech.Dan@epa.gov>
Subject: RE: Integrity.gov: Filing Reminder Assignment

Hi Dan,

Your new entrant process is different from your wife's. I can see your information in INTEGRITY now, even before you have formally submitted it, so you don't need to grant me any permission to view it. Please note, though, that because you got an extension of time to file your report, you need to be reporting on your assets up to the date of *filing*, not when you started at EPA. Don't use 1/20/21 because that was more than 30 days ago so your information will be stale. The information you provide must be current, meaning within the past 30 days.

Ferne Mosley will be assigned to review your report, but in glancing at it now, I can already tell that you will need to add some information:

- (b) (6), (b) (3) (A) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

In addition, please provide in an email to me the names of all clients to whom you provided services of less than \$5K, including *pro bono*, since 1/20/19. They will need to be added to your recusal statement.

Thanks,
Justina

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-----Original Message-----

From: Utech, Dan <Utech.Dan@epa.gov>

Sent: Monday, March 22, 2021 9:32 AM

To: Fugh, Justina <Fugh.Justina@epa.gov>

Subject: FW: Integrity.gov: Filing Reminder Assignment

Hi Justina - I input what I believe to be all of the required information for the 278 into integrity.gov over the weekend.

I do have one question, which is what date should I be using as the date for valuation of assets, etc. Is that January 20? That's what I assumed but I'm not clear if that's correct.

Also, what is the next step - do I give you permission to review the information that I have entered?

Thanks, Dan

-----Original Message-----

From: Integrity.gov <notifications@integrity.gov>

Sent: Monday, March 22, 2021 1:56 AM

To: Utech, Dan <Utech.Dan@epa.gov>

Subject: Integrity.gov: Filing Reminder Assignment

REMINDER: Your 2021 New Entrant report is due on 04/05/2021. Failure to file timely subjects you to a \$200 late filing fee. Remember, there's no penalty for filing early (also, filing your report will stop these annoying reminders).

You may access the report by logging into Integrity at

[https://gcc02.safelinks.protection.outlook.com/?](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fintegrity.gov%2F&data=04%7C01%7CFugh.Justina%40epa.gov%7Cc8a026a14b8c46fc145608d8ed36d9e4%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637520167123514667%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQljojV2luMzliLCJBTiI6I1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=iy%2FyJBqtOhBV5PAb9f6W9hfWfiglNFz02YdFMBhsDCg%3D&reserved=0)

[url=https%3A%2F%2Fintegrity.gov%2F&data=04%7C01%7CFugh.Justina%40epa.gov%7Cc8a026a14b8c46fc145608d8ed36d9e4%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637520167123514667%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQljojV2luMzliLCJBTiI6I1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=iy%2FyJBqtOhBV5PAb9f6W9hfWfiglNFz02YdFMBhsDCg%3D&reserved=0](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fintegrity.gov%2F&data=04%7C01%7CFugh.Justina%40epa.gov%7Cc8a026a14b8c46fc145608d8ed36d9e4%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637520167123514667%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQljojV2luMzliLCJBTiI6I1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=iy%2FyJBqtOhBV5PAb9f6W9hfWfiglNFz02YdFMBhsDCg%3D&reserved=0). If you have any questions about your filing, send a note to ethics@epa.gov.

If you need an extension, send an email to ethics@epa.gov. You need to give a reason (e.g., workload, travel, need to gather materials) and say whether you need 45 or 90 additional days.

For additional guidance about filling out the OGE-278 annual and OGE-278-T periodic financial disclosure form, see: [https://gcc02.safelinks.protection.outlook.com/?](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww2.oge.gov%2FWeb%2F278eGuide.nsf&data=04%7C01%7CFugh.Justina%40epa.gov%7Cc8a026a14b8c46fc145608d8ed36d9e4%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637520167123514667%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6lk1haWwiLCJXVCi6Mn0%3D%7C1000&sdata=Or%2BKELZKNE%2Fg0lrDdMdAvmWr5Ua2PVwn5ehA3TQpt%2B8%3D&reserved=0)

[url=https%3A%2F%2Fwww2.oge.gov%2FWeb%2F278eGuide.nsf&data=04%7C01%7CFugh.Justina%40epa.gov%7Cc8a026a14b8c46fc145608d8ed36d9e4%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637520167123514667%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6lk1haWwiLCJXVCi6Mn0%3D%7C1000&sdata=Or%2BKELZKNE%2Fg0lrDdMdAvmWr5Ua2PVwn5ehA3TQpt%2B8%3D&reserved=0](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww2.oge.gov%2FWeb%2F278eGuide.nsf&data=04%7C01%7CFugh.Justina%40epa.gov%7Cc8a026a14b8c46fc145608d8ed36d9e4%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637520167123514667%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6lk1haWwiLCJXVCi6Mn0%3D%7C1000&sdata=Or%2BKELZKNE%2Fg0lrDdMdAvmWr5Ua2PVwn5ehA3TQpt%2B8%3D&reserved=0)

From: [Fugh, Justina](#)
To: [Utech, Dan](#)
Cc: [Cassady, Alison](#)
Subject: RE: draft recusal statement, (b) (6), (b) (5)
Date: Monday, April 12, 2021 2:23:00 PM

Thanks! I'll take care of the distribution!

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Utech, Dan <Utech.Dan@epa.gov>
Sent: Monday, April 12, 2021 11:32 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Cassady, Alison <Cassady.Alison@epa.gov>
Subject: RE: draft recusal statement, (b) (6), (b) (5)

Thanks Justina – a signed copy is attached.

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, April 8, 2021 8:50 AM
To: Utech, Dan <Utech.Dan@epa.gov>
Subject: RE: draft recusal statement, (b) (6), (b) (5)

Hi,

That recusal language is based on the ownership interest in Paychex. Because of the value of the stock, not only are you recused from working on specific party matters with Paychex, but you are also recused from working on matters of general applicability that will affect their business sector. Their website describes the company as a “leading provider of integrated human capital management solutions for payroll, benefits, human resources, and insurance services,” but to avoid any further confusion, I’ve revised this description in your recusal statement (changes in italics):

Based on my ownership interest in Paychex, I also understand that I am recused from participating personally and substantially in any particular matter of general applicability that is focused in the following sector: private sector payroll, human resources and benefits outsourcing services. I have consulted with OGC/Ethics and been advised that my official duties as Chief of Staff are not expected to involve particular matters of general applicability affecting Paychex. Should a particular matter nevertheless arise that appears to be focused in this sector, then I will consult

with OGC/Ethics before participation. I will remain vigilant and notify OGC/Ethics immediately should my financial situation change.

Attached is the revised document for your digital signature.

Justina

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From: Utech, Dan <Utech.Dan@epa.gov>

Sent: Thursday, April 08, 2021 8:10 AM

To: Fugh, Justina <Fugh.Justina@epa.gov>

Subject: RE: draft recusal statement, (b) (6), (b) (5)

Hi Justina – one additional question about the recusal statement regarding the inclusion of “human resource” as sector that I need to steer clear of for matters of general applicability. I’m involved in a lot of internal personnel matters, some of which have applicability to all EPA employees (e.g., the agency covid plan). I just want to make sure the language we have doesn’t suggest those types of things aren’t appropriate – unless of course that is in fact the case. Can you please advise? Thanks.

From: Fugh, Justina <Fugh.Justina@epa.gov>

Sent: Tuesday, April 6, 2021 9:33 PM

To: Utech, Dan <Utech.Dan@epa.gov>

Subject: RE: draft recusal statement, (b) (6), (b) (5)

Hi,

Alison it is! I’ve added her name, spelt correctly this time, into the recusal. I also caught a typo and added a qualifier to the financial conflicts section (“Based on the current level of ownership, I understand that I am disqualified ...”). Attached is the revision, set up for your digital signature. As for what it means, here’s a cheat sheet:

Recusal Statement Section	What It Means
Introductory paragraph	You acknowledge you are subject to the ethics rules and the Biden ethics pledge
Financial conflicts of interest	You acknowledge you are subject to the federal financial conflict of interest statute. You acknowledge that you are responsible for your own interests and those that are imputed to you (e.g., your spouse, children, etc.).

(b) (5)

Only three of your assets are above the regulatory exemption levels. See the chart below:

Regulatory Exemption Levels

There are different regulatory exemption levels, depending on the type of particular matter. You can still participate if you own less than the levels below:

SPECIFIC PARTY MATTER e.g., an enforcement action against ABC Widget Company	MATTER OF GENERAL APPLICABILITY e.g., working on a rulemaking that affects all widget manufacturers
<p>≤\$15,000 in ABC Widget Co. itself or in aggregate among all widget manufacturers</p> <p>≤\$25,000 aggregate for any affected non-parties (e.g., DEF Widget Corp. which manufactures a similar product)</p>	<p>≤\$25,000 aggregate in any one widget maker (e.g., ABC Widget Corp. or DEF Widget Corp.)</p> <p>≤\$50,000 aggregate in all affected parties (all widget makers)</p>

So your recusal statement lists three specific party recusals (Donaldson Incl, Intel and Paychex) because (b) (6)

, so you have to recuse from working on that sector of business, but I’ve added the unlikelihood of any such matter of general applicability to arise at EPA.

Biden pledge	<p>You acknowledge your former employer/former client recusals and list them here: Yale, Energy Foundation, CAELP, Clean Wisconsin.</p> <p>For two years (until after 1/20/23), you can’t work with any of these entities at all. You can’t take their calls or emails as part of your official duties, and you can’t work with anyone else who is working with them. For example, if the Administrator is invited to give a speech at Yale, then you can’t help prepare him or attend with him. If he is asked to meet with the Energy Foundation, you can’t participate at all, and you can’t even attend the meeting unless you first clear it with us. We will examine the subject of the meeting to determine if it is a “matter of general applicability” and then ascertain whether it is “open to</p>
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	<p>all interested parties.” If not, then you can’t even attend the meeting.</p> <p>In order to work with any of your former client/former employer, you will need a pledge waiver. Those are issued by the DAEO but only after consultation with the White House.</p>
Screening arrangement	Establishes who can work with the entities from which you are recused (whether for financial conflicts or pledge reasons) without your knowledge or participation.
Update as necessary	Once your spouse sells the assets under the CD, we can revise the recusal to eliminate the companies.

Hope this helps!

Justina

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From: Utech, Dan <Utech.Dan@epa.gov>

Sent: Tuesday, April 06, 2021 8:46 PM

To: Fugh, Justina <Fugh.Justina@epa.gov>

Subject: Re: draft recusal statement, (b) (6), (b) (5)

Ok I will ask Alison. Thanks.

On Apr 6, 2021, at 8:01 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Hi,

Your screener is most likely someone in your office who is able to see/review things before they get to you. For other principals, the screener is the chief of staff or special assistant. In your case, it could be Allison Cassady, but it would not be someone in ethics.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC

20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Utech, Dan <Utech.Dan@epa.gov>
Sent: Tuesday, April 06, 2021 6:15 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: draft recusal statement, (b) (6), (b) (5)
[REDACTED]

Thank you. I'll need your help to make sure I understand it but it looks good to me. One question I do have is who should be a screener for me? Is it someone in ethics?

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Monday, April 5, 2021 12:18 PM
To: Utech, Dan <Utech.Dan@epa.gov>
Subject: RE: draft recusal statement, (b) (6), (b) (5)
[REDACTED]

Here's your draft recusal. Sorry for the mix up!
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Utech, Dan <Utech.Dan@epa.gov>
Sent: Monday, April 05, 2021 11:23 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: draft recusal statement, (b) (6), (b) (5)
[REDACTED]

Thanks Justina – (b) (6). I'll talk to andrea about that but assume that I should amend my filing?

As far as recusals, the doc you attached is Administrator Regan's recusals not mine.

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Sunday, April 4, 2021 11:47 PM

To: Utech, Dan <Utech.Dan@epa.gov>

Subject: draft recusal statement, (b) (6), (b) (5)

Hi there,

I have reviewed your wife's ethics agreement and her nominee report and, while there are a few minor differences, there are no problems. Your filing dates are different, so it's understandable that there might be minor fluctuations in valuations. I noted that there are two assets that are included in her ethics agreement to be divested (b) (6), (b) (5)

The attached recusal statement covers the assets that you currently own and will own until your wife divests through a CD. You will need to insert the name of a screener or someone who can make decisions about how to deal with matters from which you will be recused. (b) (6), (b) (5)

Your wife will have to file periodic transaction reports (the 278T) when those assets are sold, and you will too. Failure to file transaction reports timely (meaning 30 days after receiving notice but no later than 45 days after the trade itself) results in a \$200 late filing fee for each missed transaction. Brutal. After the sale, though, you can revise your recusal statement.

With regard to (b) (6), (b) (5)

Justina

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From: Utech, Dan <Utech.Dan@epa.gov>

Sent: Tuesday, March 30, 2021 3:58 PM

To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: FW: Profile of EPA Chief of Staff Dan Utech

Bumping this email from yesterday with Andrea's ethics agreement attached for your reference.

From: Utech, Dan
Sent: Monday, March 29, 2021 3:20 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: Profile of EPA Chief of Staff Dan Utech

Thanks Justina, very helpful. (b) (5)

That said, I think this is a good prompt to start getting my recusal statement together. I have attached Andrea's ethics agreement. (b) (6)

So to bottom line it, (b) (6)

As for consulting clients, I'll add them to the 278 as you suggested.

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Monday, March 29, 2021 11:32 AM
To: Utech, Dan <Utech.Dan@epa.gov>
Subject: RE: Profile of EPA Chief of Staff Dan Utech

Hi Dan,

You won't have an "ethics agreement" (like your spouse) but rather a recusal statement. And we haven't drafted that because your financial disclosure report isn't finalized. That said, we could (b) (5), (b) (6)

Speaking of which, when you finalize your own 278, be sure to add the names of your former clients in Part 4. I don't recall that they were included on your resume.

(b) (5)

You could, however, simply indicate instead that you have consulted with EPA Ethics and will abide by your obligations under the federal ethics laws and regulations and the Biden Ethics Pledge that you signed. You understand that you are recused from participating as part of your official duty in any particular matter in which your former employer and former clients, as defined by Executive Order 13989, is a party or represents a party.

Justina

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From: Utech, Dan <Utech.Dan@epa.gov>
Sent: Monday, March 29, 2021 9:25 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: FW: Profile of EPA Chief of Staff Dan Utech

Hi Justina – per below, eenews' Kevin Bogardus is writing a profile piece on me (lucky me!). In doing his reporting, he has found my wife's 278, and asks the question below about my consulting clients and recusals. Presumably this will be covered by my ethics agreement, but we don't have that yet, and Kevin's deadline is tomorrow COB. So my question is whether (b) (5)

all 3 clients are environmental NGOs: the Energy Foundation, the Center for Applied Environmental Law and Policy, and Clean Wisconsin. Here's the question from the reporter:

-- Dan's wife Andrea Palm's financial disclosure report says Dan is no longer lecturing at Yale University and is not continuing his consulting business (please see page 11 of the attached). Dan's consulting business, Climate Strategies, advised non-governmental organizations on climate change policy and advocacy. Who were Dan's clients at Climate

Strategies? And does Dan plan to recuse himself from EPA matters involving his former clients at Climate Strategies?

From: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>

Sent: Saturday, March 27, 2021 8:50 AM

To: Utech, Dan <Utech.Dan@epa.gov>

Cc: Conger, Nick <Conger.Nick@epa.gov>

Subject: FW: Profile of EPA Chief of Staff Dan Utech

Happy to discuss how you might like to handle, Dan.

I'm available this weekend and we have until Tuesday COB.

I'd suggest (b) (5)

Thanks,
Lindsay

From: Kevin Bogardus <kbogardus@eenews.net>

Sent: Friday, March 26, 2021 10:29 PM

To: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>; Conger, Nick <Conger.Nick@epa.gov>; Press <Press@epa.gov>; Utech, Dan <Utech.Dan@epa.gov>

Subject: Profile of EPA Chief of Staff Dan Utech

Hey everyone,

It's Kevin Bogardus with E&E News. I hope all is well. My apologies for the Friday night email. I will check in again Monday morning. I'm also copying Dan on this email because this story is about him.

I'm working on a profile of EPA Chief of Staff Dan Utech. I have interviewed former colleagues and friends of Dan, who I will be quoting in my story about their memories of and your thoughts about him. I have also interviewed former EPA chiefs of staff, who I will also be quoting in my story about the challenges and rewards of the job as well as what qualities one needs to be a successful EPA chief of staff.

It would be great to do a phone interview with Dan for my story. I have a few questions for him, which are the following:

-- I heard Dan has had prior experience at EPA, working as a career EPA employee at some point during the 1990s. From when to when did Dan work at EPA? What was his title? What office did he work in? And in what location did he work in?

-- Dan's wife Andrea Palm's financial disclosure report says Dan is no longer lecturing at Yale University and is not continuing his consulting business (please see page 11 of the attached). Dan's consulting business, Climate Strategies, advised non-governmental organizations on climate change policy and advocacy. Who were Dan's clients at Climate Strategies? And does Dan plan to recuse himself from EPA matters involving his former clients at Climate Strategies?

-- I noticed Dan's wife Andrea Palm is a former aide to then-Sen. Clinton. Dan is also a former aide to then-Sen. Clinton. Is that where they first met, in then-Sen. Clinton's office?

-- Several people told me Dan is a Washington Nationals fan and was a season ticket holder. Is Dan still a Washington Nationals season ticket holder?

-- Why did Dan take the EPA chief of staff job?

In addition, I don't have any questions about the following findings in my story but I wanted to give you a chance to comment on them. Please let me know if you have any comment on the following:

-- Dan is 55 years old; is a Rochester, N.Y. native; graduated from Amherst College with a bachelor of arts degree in 1988; graduated from the Yale School of Forestry & Environmental Studies with a master of environmental studies degree in 1997; and graduated from the Yale School of Management with a master of business administration degree.

-- Dan was an aide to former Sen. Corzine; from 2003 to 2009, he was a senior advisor on energy and environmental issues for then-Sen. Clinton; from 2009 to 2010, he was a senior advisor at the Department of Energy; from 2010 to 2017, he was working on energy and climate change issues in the White House, including as the deputy assistant to the president for energy and climate change; and from 2017 to 2021, he was a lecturer at the Yale School of the Environment and worked at his consulting business, Climate Strategies.

-- In the White House, Dan offered advice on the Renewable Fuel Standard (please see <https://wikileaks.org/podesta-emails/emailid/13431>); was credited with his work on the Paris Agreement (please see <https://wikileaks.org/podesta-emails/emailid/43975>); and was praised for his work on the Clean Power Plan (please see <https://wikileaks.org/podesta-emails/emailid/7843>), according to John Podesta's hacked emails posted online by Wikileaks.

-- Arvin Ganesan told me he remembers that during the height of the 2008 Democratic presidential primary when the Lieberman-Warner climate

change bill was being marked up in the Senate Environment and Public Works Committee, Dan served as a proxy for then-Sen. Clinton at the markup because she was on the campaign trail. Dan had to vote on then-Sen. Clinton's behalf, including on several amendments to the bill, at the markup.

-- Jeff Navin told me he remembers working with Dan on the response to Solyndra as Republican lawmakers issued subpoenas and held hearings about the government loan given to the bankrupt solar panel company. At the time, Navin was at the Department of Energy and Dan was at the White House.

-- Christy Goldfuss told me she remembers standing next to Dan every morning at the senior leadership staff meeting in the Roosevelt Room in the White House and always trying to get him to laugh.

-- Rohan Patel told me he remembers one weekend working with Dan at the White House on the Clean Power Plan when tennis champion Andy Murray, who was doing a White House tour, stopped by and Patel and Dan fielded questions from Murray about climate change and energy.

Please get back to me as soon as possible. My deadline is close of business Tuesday, March 30, but the sooner you get back to me, the more it helps my reporting. Also, since I'm working from home, please email me here or call my cell phone at (b) (6). Thank you for your help and stay safe, stay healthy!

Kevin Bogardus

E&E News Reporter

kbogardus@eenews.net

202-446-0401 (o)

(b) (6) (c)

202-737-5299 (f)

Follow me [@KevinBogardus](https://twitter.com/KevinBogardus)

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From: [Fugh, Justina](#)
To: [Blythers, Dorien](#); [Cassady, Alison](#); [Carpenter, Wesley](#)
Cc: [Payne, James \(Jim\)](#)
Subject: Recusal statement signed by Dan Utech
Date: Monday, April 12, 2021 2:28:00 PM
Attachments: [recusal statement signed 4-12-21.pdf](#)

Hi there,

For your information, attached is the signed recusal statement for Dan Utech, Chief of Staff. I have already sent it to Brian Hope of Executive Secretariat for the Administrator's reading file.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF THE
ADMINISTRATOR

MEMORANDUM

SUBJECT: Recusal Statement

FROM: Dan Utech
Chief of Staff

Utech, Dan

Digitally signed by Utech,
Dan
Date: 2021.04.12
11:31:07 -04'00'

TO: Michael S. Regan
Administrator

I have consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and President Biden's Ethics Pledge that I signed.

FINANCIAL CONFLICTS OF INTEREST

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Based on the current level of ownership, I understand that I am disqualified from participating personally and substantially in any particular matter that will have a direct and predictable effect upon any of the following entities as a specific party:

RECUSAL LIST - NAME OF COMPANY		
Donaldson Inc.	Intel	Paychex

Based on my ownership interest in Paychex, I also understand that I am recused from participating personally and substantially in any particular matter of general applicability that is focused in the following sector: **private sector payroll, human resources and benefits outsourcing services**. I have consulted with OGC/Ethics and been advised that my official duties as Chief of Staff are not expected to involve particular matters of general applicability affecting Paychex. Should a particular matter nevertheless arise that appears to be focused in this sector, then I will consult with OGC/Ethics before participation. I will remain vigilant and notify OGC/Ethics immediately should my financial situation change.

OBLIGATIONS UNDER EXECUTIVE ORDER 13989

Pursuant to Section 1, Paragraph 2 of the Executive Order, I understand that I am prohibited from participating in any particular matter involving specific parties in which my former employer – **Yale University** -- or any of my former clients -- the **Energy Foundation**, the **Center for Applied Environmental Law and Policy**, and **Clean Wisconsin** -- is a party or represents a party. For the purposes of the Executive Order, I had no other “former clients” to whom I provided consulting services while self-employed as a consultant, and my consultancy is in abeyance and not taking on any new clients. I understand that my recusals regarding Yale University; the Energy Foundation; the Center for Applied Environmental Law and Policy; and Clean Wisconsin will last for two years from the date that I joined federal service. These recusals will end after January 20, 2023.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means that the meeting should include a multiplicity of parties. If, for example, there is “a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client.”¹ Such a meeting must also include a diversity of interests. Should a question arise as to whether a specific forum qualifies as “open to all interested parties,” then I will consult with OGC/Ethics.

SCREENING ARRANGEMENT

In order to ensure that I do not participate in matters relating to any of the entities listed above, I will instruct Alison Cassady, Deputy Chief of Staff for Policy, to assist in screening EPA matters directed to my attention that involve my former employer or my former clients. All inquiries and comments involving the entities or issue areas on my recusal list should be directed to the Deputy Chief of Staff for Policy without my knowledge or involvement.

If the Deputy Chief of Staff for Policy determines that a particular matter will directly involve any of the entities or issue areas on my recusal list, then she will refer it for action or assignment to another, without my knowledge or involvement. In the event that she is unsure whether an issue is a particular matter from which I am recused, then she will consult with

OGC/Ethics for a determination. I will provide a copy of this memorandum to my principal subordinates and a copy to Justina Fugh, Director, Ethics Office.

UPDATE AS NECESSARY

In consultation with OGC/Ethics, I will revise and update my recusal statement whenever warranted by changed circumstances, including changes in my financial interests, changes in my personal or business relationships, or any changes to my EPA duties. In the event of any changes, I will provide a copy of the revised recusal statement to you and OGC/Ethics.

cc: Alison Cassady, Deputy Chief of Staff for Policy
Dorien Blythers, Deputy Chief of Staff for Operations
Wes Carpenter, Acting Deputy Chief of Staff
Justina Fugh, Director, Ethics Office

From: [Utech, Dan](#)
To: [Fugh, Justina](#)
Subject: RE: Friendly reminder to please sign the attached Biden Ethics pledge
Date: Tuesday, January 26, 2021 8:26:29 AM
Attachments: [Biden Ethics Pledge for digital signature.pdf](#)

From: Fugh, Justina <Fugh.Justina@epa.gov>

Sent: Tuesday, January 26, 2021 12:22 AM

To: Adhar, Radha <Adhar.Radha@epa.gov>; Enobakhare, Rosemary <Enobakhare.Rosemary@epa.gov>; Fox, Radhika <Fox.Radhika@epa.gov>; Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>; Harris, Sincere <Harris.Sincere@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Katims, Casey <Katims.Casey@epa.gov>; Utech, Dan <Utech.Dan@epa.gov>

Subject: Friendly reminder to please sign the attached Biden Ethics pledge

Thanks in advance! You can send it back to me or to ethics@epa.gov.

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

ETHICS PLEDGE

I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.

Accordingly, as a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

1. *Lobbyist Gift Ban.* I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.
2. *Revolving Door Ban — All Appointees Entering Government.* I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.
3. *Revolving Door Ban — Lobbyists and Registered Agents Entering Government.* If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 *et seq.*, or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 *et seq.*, within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:
 - (a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;
 - (b) participate in the specific issue area in which that particular matter falls; or
 - (c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.
4. *Revolving Door Ban — Appointees Leaving Government.* If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.
5. *Revolving Door Ban — Senior and Very Senior Appointees Leaving Government.* If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections' implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment, I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by (a) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.
6. *Revolving Door Ban — Appointees Leaving Government to Lobby.* In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.
7. *Golden Parachute Ban.* I have not accepted and will not accept, including after entering Government, any salary or other cash payment from my former employer the eligibility for and payment of which is limited to individuals accepting a position in the United States Government. I also have not accepted and will not accept any non-cash benefit from my former employer that is provided in lieu of such a prohibited cash payment.
8. *Employment Qualification Commitment.* I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.
9. *Assent to Enforcement.* I acknowledge that the Executive Order entitled "Ethics Commitments by Executive Branch Personnel," issued by the President on January 20, 2021, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me as a civil servant in Federal Government service.

Dan Utech

1/26

21

Signature

Date

Name (Type or Print):

Dan Utech

From: [Fugh, Justina](#)
To: [Dan Utech](#)
Subject: RE: Hello from EPA Ethics!
Date: Sunday, January 17, 2021 10:14:00 PM

Hi there,

Let's have you call into my conference line at (b) (6), code is (b) (6)#, at 10 am eastern time. That way, a member of my team can be on the call too. I've been an EPA employee for more than 30 years, so I'm trying to ensure that my team gets as much transition experience as possible. Don't know if you're a Green Bay fan, but the match-up between Aaron Rodgers and Tom Brady should make for a good game.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Dan Utech (b) (6)
Sent: Sunday, January 17, 2021 8:47 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Re: Hello from EPA Ethics!

Hi Justina - thanks for reaching out. I'd be glad to talk tomorrow. I'm expecting one or two things to land on my calendar but as of now my whole morning is free. Times then that work for you? Best,
Dan

On Jan 17, 2021, at 7:43 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Hi there,

My name is Justina Fugh, and I'm the director of the EPA Ethics Office. I understand from Sinceré Harris that you will be joining EPA very soon in the position of Chief of Staff, which will be a non-career SES appointment. Congratulations! In this position, you will be required to file a public financial disclosure report and abide by federal ethics laws and regulations. I would like to talk with you to ascertain whether you'll present any ethics issues that will require recusal. We will, for example, need to know the clients to whom you've personally provided services in the past year, at a minimum. It's possible that a Biden ethics pledge will require that we know about your clients over the past two years. Even though we don't yet know the details under a Biden pledge, we can at least discuss the contours of recusal under the impartiality standards. I will also want to know whether you have an ongoing teaching commitment with Yale for spring 2021 semester and, if so, inquire about the compensation arrangement. As a non-career SES appointee, there are limitations on your ability to accept compensation for outside activity related to this Agency's general subject matter area.

Will you be available to talk tomorrow, January 18? If so, let me know when, and

I'll set up a call.

Thanks,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code
2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC
20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-
564-1772

From: [Fugh, Justina](#)
To: [Dan Utech](#)
Cc: [Clarke, Victoria](#)
Subject: Welcome (back) to the world of public financial disclosure reporting!
Date: Monday, January 18, 2021 12:55:00 PM
Attachments: [Advisory to all 278 filers about filing fee.pdf](#)
[reporting periods for 278s.docx](#)
[When to Report Transactions on the OGE 278 and Part 7 - November 2020.docx](#)
[Hatch Act chart Sept 2020.docx](#)

Hi there,

Thank you very much for talking with Victoria Clarke and me, and I'm sorry again for my tardiness. I'll send you a separate email to confirm that conversation, but this message deals with financial disclosure. You can get started on the public financial disclosure report since you will be joining EPA on or about 1/20/21 as a non-career SES appointee in the position of Chief of Staff, which is a non-career SES position. You will not be able to submit it until after you actually start, but we will still be able to peek at your progress. Given this type of appointment, you are required by the Ethics in Government Act of 1978 to file the Public Financial Disclosure Report. What follows is a long, chatty email with tons of information. If you need help, then please let me or my staff know. We really are here to help you.

DEADLINE FOR SUBMITTING THE REPORT

Technically, your "new entrant" report is due no later than 30 days from your effective date at EPA or 2/19/21. If you need additional time, you must contact ethics@epa.gov before your deadline expires. There is a limit to how much additional time we can give you, and we can't grant any extension after the fact.

THE FINANCIAL DISCLOSURE REPORT, OGE-278e

EPA uses an electronic filing system (www.INTEGRITY.gov) for the public financial disclosure reports that is operated and secured by the U.S. Office of Government Ethics (OGE). You are required by law to complete the form, and we will use it to determine whether you have any financial conflicts of interest or other ethics concerns.

We revived your account in INTEGRITY and have assigned you a "new entrant" report. Your filer category is "non career SES" and your filer status is "full time." We have pre-populated the address field with EPA's address because, well, this is a public form and we don't want anyone to know your personal address. For help in INTEGRITY, check out the OGE [Public Financial Disclosure Guide](#). The email from INTEGRITY.gov will provide you with specific instructions to log into the federal government's max.gov site, the gateway to INTEGRITY. If you didn't receive your account notification, then check your clutter box for messages from INTEGRITY.gov, or contact ethics@epa.gov.

There are several important things to know about the OGE-278e: (1) it is a public form (which means that anyone can ask for a copy of your form, but Congress repealed the requirement for public posting to the internet); (2) you have to fill it out every year you are in this position; (3) when you leave the position, you will have to file a termination report; and (4) you will be subject to a late filing fee of \$200 for not filing your report timely.

REQUIREMENT TO ANSWER ANY FOLLOW UP QUESTIONS WITHIN 14 DAYS

We will review your report as quickly as possible. If we have any questions, then we will notify you. At that point, you will have 14 calendar days to respond and resubmit your report back to us with any necessary changes.

REPORTING TRANSACTIONS

While you are in this position, you are a public financial disclosure filer who is subject to certain additional requirements of the Ethics In Government Act as amended by the STOCK Act. You will be required to report any purchase, sale or exchange of stocks, bonds, commodities futures or other forms of securities when the amount of the transaction exceeds \$1000. Use INTEGRITY to disclose reportable transactions within 30 days of receiving notification of the transaction, but not later than 45 days after the transaction occurs. You will have to report transactions that occur within brokerage accounts, managed accounts, or other investment vehicles that you own or jointly own with your spouse or another person, as well as transactions of your spouse or dependent children. We will go over this requirement during your initial ethics training, but I've also attached our reminder about late fees and when to report transactions. Remember, you are responsible for reporting transactions, even if you have a managed account, and you will be fined for a tardy periodic transaction report.

YES, YOU CAN BE FINED FOR NOT FILING PROMPTLY

It's worth repeating that you can be fined \$200 for not meeting the submission deadline (and you still have to file that report). PLEASE pay attention to your filing requirements! If you need an extension, then you must ask before your deadline expires. There is a limit to how much additional time you may receive.

HELPFUL HINTS FOR FILLING OUT THE FORM

- This is a wretched and exacting form, so just know that you will have to provide a lot of information.
- You will get three different places to report assets: filer's employment-related assets and income, spouse's employment related assets and income, and other assets and income. You must report assets for yourself, your spouse and any dependent children. We don't really care where you report your assets, just that you do report them all someplace.
- You must include any investment asset that is worth more than \$1000. Include any income from any source that exceeded \$200 during the reporting period (including outside jobs or hobbies, rental income). Include any cash/savings accounts that have more than \$5000.
- Enter each asset separately. Don't lump items together on one line. Be sure to provide the valuation of the asset AND the amount of the income. For assets that aren't mutual funds, you also have to report the type of income (e.g., dividends, cap gains).
- For 401(k) or IRA plans, provide the name of each of the underlying assets. Don't just write "Vanguard IRA" or "mutual fund." You must specify each asset separately and give the valuation but, for these assets in tax deferred instruments, you do not need to provide the amount of income accrued.
- Do not report your federal salary, your spouse's federal salary, or Thrift Savings Plan information
- If you (not your spouse) have any earned income (e.g., outside job, paid pension), you have to report the actual amount of that income.
- If your spouse works outside of federal service, then include your spouse's employer but not the amount of your spouse's salary. If you are not legally married, do not report your significant other's employer.
- Don't forget to include any life insurance policies (whole life or variable life) as well as the underlying investments. Do not report term life insurance.
- If you have nothing to report in a section, be sure to click the "nothing to report" button

- The various parts of the form have different reporting periods, so please consult the attached “reporting periods” chart. Remember to check out the Office of Government Ethics’ [Public Financial Disclosure Guide](#) or to contact OGC/Ethics for help. We know this is a beast of a form, so we really are here to help you.

OTHER ETHICS REQUIREMENTS FOR YOU

HATCH ACT

As a federal employee, you will be “lesser restricted” under the Hatch Act. During your new employee orientation, the ethics staff will go over the Hatch Act, which governs the political activity of government employees. For a refresher, you can familiarize yourself with the Hatch Act as it affects you by reviewing our attached handy chart.

ETHICS TRAINING

As a public financial disclosure filer, you must take one hour of ethics training this year. The new employee training you will have on 1/21/21 with the ethics staff meets your annual training requirement for this year. Next year, you will take the annual training online.

If you have any questions regarding this message or your obligations, then please contact me or anyone in the OGC Ethics Office at ethics@epa.gov. We’ll be happy to assist you.

Cheers,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Timely Filing of Public Financial Disclosure and Periodic Transaction Reports

FROM: David Cozad *David Cozad* 8/29/19
Acting Designated Agency Ethics Official

TO: All EPA Public Financial Disclosure Report Filers

In 1978, Congress enacted the Ethics In Government Act, 5 U.S.C. app., to establish the Executive Branch financial disclosure reporting system that requires mandatory public disclosure of financial and employment information of certain officials and their immediate families. Because you occupy a designated position (either permanently or for more than 60 days on detail), you are required by this statute to file the public financial disclosure report. As executive branch employees, we are all bound by federal ethics laws and regulations, including prohibitions against financial conflicts of interest and loss of impartiality. Your disclosures allow the Office of General Counsel's Ethics Office (OGC/Ethics) to assist you in identifying and addressing potential or actual conflicts of interest in order to maintain the integrity of the Agency's programs and operations.

This memorandum formally reminds you that you are required by law to timely and accurately file your Public Financial Disclosure Reports (OGE 278e)¹ and Periodic Transaction Reports (OGE 278-Ts).² Failure to file timely will result in a **\$200 late filing fee** unless you formally request and receive a waiver of the late fee from the Designated Agency Ethics Official (DAEO) or Alternate Designated Agency Ethics Official (ADAEO).³ Unpaid late fees are subject to the Agency's⁴ and the government's debt collection procedures.

In addition to filing timely, you must also file a complete and accurate report. Should OGC/Ethics contact you for any additional required information, you will have no more than **30 days** to update your report. For guidance on how to file an accurate report, please refer to the Public Financial Disclosure Guide or contact OGC/Ethics at ethics@epa.gov.

¹ See 5 U.S.C. app. § 101; 5 C.F.R. § 2634.201.

² Pub. L. 112-105 § 11 (STOCK Act).

³ See 5 U.S.C. app. § 104(d)(1); 5 C.F.R. § 2634.704(a).

⁴ See Resource Management Directive System 2540-03-P2 dated 07/12/2016.

Please refer to this chart for your filing obligations:

OGE 278e - New Entrant reports	Within 30 days of entering a covered position (either by appointment to a permanent or acting in covered position)
OGE 278e – Incumbent reports	No later than May 15
OGE 278e – Termination reports	No later than 30 days after leaving a covered position (either through reassignment, resignation, or the end of acting in a covered position) (Reports may be submitted within 15 days prior to termination)
OGE 278T – Periodic transaction reports ⁵	The earlier of 30 days after learning of a transaction or 45 days of the transaction taking place.

How to request an extension of the filing deadline:

For good cause (e.g., travel, workload issues, sickness), you may request up to two 45-day extensions. Submit the request by email, including the reason, to ethics@epa.gov **prior to the due date**. Extensions cannot be granted after the due date has passed.

How to request the waiver of a late filing fee:

If *extraordinary circumstances* prevented you from meeting the deadline and OGC/Ethics assessed a late fee, you may request a waiver of the late fee. See 5 C.F.R. § 2634.704. Submit your request in writing to ethics@epa.gov, to the attention of the DAEO and ADAEO, describing the extraordinary circumstances and provide any supporting documentation. Please note that vacations or routine work obligations are not “extraordinary” circumstances. The decision to grant or deny a waiver is at the sole discretion of the DAEO/ADAEO and is final.

You are required by law to comply with these financial reporting obligations. Your colleagues in OGC/Ethics are available to provide assistance, but it is always your obligation to file your reports timely and accurately. In fact, ethics regulations *require* that we refer individuals to the Department of Justice (DOJ) when there is reasonable cause to believe that they have willfully failed to file a required report or provide the information that the report requires. The current maximum civil penalty is \$56,216.⁶

As public servants, we know that you take your ethics obligations seriously. As such, we expect you to make a good faith effort to adhere to the timeliness and completeness requirements of your financial disclosure reporting obligations. If you have any questions, please contact ethics@epa.gov.

ATTACHMENT - *When to Report Transactions on the OGE 278 and OGE 278T*

cc: Justina Fugh, Alternate Designated Agency Ethics Official

⁵ See attached guidance – *When to Report Transactions on the OGE 278 and OGE 278T*.

⁶ In 2012, OGC/Ethics referred an individual to DOJ for failure to file a termination report despite repeated reminders and entreaties. That individual paid a civil penalty of \$15,000 and still had to file the termination report.

Political Activities and Federal Employees

The Hatch Act, enacted in 1939, was amended in 1993 and 2012. It regulates the political activities of executive branch employees, excluding the President and Vice President. The following table summarizes what political activities EPA employees can and cannot do based on their appointment. Note: Public Health Service officers must adhere to 45 CFR Part 73, Subpart F, which is most similar to the Career SES/ALJ column.

Political activity means an activity “directed toward the success or failure of a political party, a candidate for partisan political office, or a partisan political group.”

Type of Activity	PAS*	Non-Career SES, Schedule C*, Title 42, SL/ST, AD*, GS, Other	Career SES, ALJs
Personal (off premises and off duty)			
Express support for or opposition to a political candidate when off duty	Yes	Yes	Yes
Run as a partisan candidate for nomination or office in a partisan election	No	No	No
Solicit and accept contributions for your campaign in a non-partisan election	Yes	Yes	Yes
Solicit a contribution from a member of your union	N/A	Yes	N/A
Work a phone bank asking individuals to volunteer	Yes	Yes	No
Campaign on behalf of a candidate in a partisan election	Yes	Yes	No
Be active on behalf of a candidate at political rallies or meetings	Yes	Yes	No
Attend political rallies and meetings	Yes	Yes	Yes
Contribute money to political organizations	Yes	Yes	Yes
Work in non-partisan voter registration drives	Yes	Yes	Yes
Work in partisan voter registration drives	Yes	Yes	No
Register and vote	Yes	Yes	Yes
Sign a nominating petition	Yes	Yes	Yes
Distribute campaign material in a partisan election	Yes	Yes	No
Work as an election judge, poll watcher, clerical worker on election day and receive compensation for that work	Yes	Yes	Yes but nonpartisan only
Drive people to polling station on behalf of a campaign	Yes	Yes	No
Affecting Official Resources			
Use office time for political activity	Yes; IG-No	No	No
Use official space for political activity in general	Yes; IG-No	No	No
Fundraising			
Attend a political fundraiser	Yes	Yes	Yes
Solicit, accept or receive political contributions in general	No	No	No
Solicit or receive a political contribution on government premises	No	No	No
Plan or organize a political fundraiser when off duty	Yes	Yes	No
Sponsor, host, or allow your name as sponsor/host for a political fundraiser	No	No	No
Serve drinks or check coats at a political fundraiser	Yes	Yes	No
Speak at a partisan fundraiser without appealing for money	Yes	Yes	No
Allow only your name to be listed as speaker on fundraising invitation	Yes	Yes	No

*PAS = Political Appointee Confirmed by the Senate; Schedule C = political appointees not confirmed by Senate; AD = Administratively Determined; SES = Senior Executive Service

The reporting periods for the OGE Form 278e vary depending on the type of report being filed.

Part	Report Information for the Following Period...			
	Nominee, New Entrant, and Candidate	Annual	Termination	Annual / Termination
1. Filer's Positions Held Outside United States Government	Preceding Two Calendar Years to Filing Date	Preceding Calendar Year to Filing Date	Current Calendar Year to Term Date (in addition, the preceding calendar year if an Annual report for that year is required but has not yet been filed)	Preceding Calendar Year to Term Date
2. Filer's Employment Assets & Income and Retirement Accounts	Preceding Calendar Year to Filing Date ¹	Preceding Calendar Year	Same as Part 1	Same as Part 1
3. Filer's Employment Agreements and Arrangements	As of Filing Date	Preceding Calendar Year to Filing Date	Same as Part 1	Same as Part 1
4. Filer's Sources of Compensation Exceeding \$5,000 in a Year	Preceding Two Calendar Years to Filing Date (n/a for Candidates)	N/A – Leave this Part blank	N/A – Leave this Part blank	N/A – Leave this Part blank
5. Spouse's Employment Assets & Income and Retirement Accounts	Preceding Calendar Year to Filing Date ¹	Preceding Calendar Year	Same as Part 1	Same as Part 1
6. Other Assets and Income	Preceding Calendar Year to Filing Date ¹	Preceding Calendar Year	Same as Part 1	Same as Part 1
7. Transactions	N/A – Leave this Part blank	Preceding Calendar Year ²	Same as Part 1 ²	Same as Part 1 ²
8. Liabilities	Preceding Calendar Year to Filing Date ¹	Preceding Calendar Year	Same as Part 1	Same as Part 1
9. Gifts and Travel Reimbursements	N/A – Leave this Part blank	Preceding Calendar Year ³	Same as Part 1 ³	Same as Part 1 ³

1. For example, if today is March 3, 2019, the reporting period would run from January 1, 2018, to March 3, 2019. When valuing assets and liabilities, the filer may choose any date that is fewer than 31 days before the filing date.

2. Filers do not need to include any period when they were not a public financial disclosure filer or an employee of the United States Government.

3. Filers do not need to include any period when they were not an employee of the United States Government.

Extensions Do Not Change the Reporting Period

The reporting period is tied to a report's original due date and is unaffected by any extensions. For example, a New Entrant report was originally due December 14, 2019. The filer received a 30-day extension and filed January 8, 2020. The Part 2 reporting period would start on January 1, 2018, and end on December 14, 2019.

When to Report Transactions

FILING DEADLINE : 30 days from notification or 45 days from transaction *whichever is earlier*

A \$200 late filing fee penalty is assessed for each late periodic reporting period¹

	Periodic Transaction Report	Annual and/or Termination Report
Investment Assets	Report on the OGE 278-T?	Report on Part 7 of the OGE 278e?
Transactions of \$1,000 or less		
• Any asset in which the transaction amount is \$1,000 or less regardless of the type of asset or who owns the asset	No	No
Investment assets held by you, your spouse, or jointly held		
• Stocks or stock options	Yes	Yes
• Corporate or municipal bonds (exclude U.S. Treasury securities)	Yes	Yes
• Commodity futures	Yes	Yes
• Other investment securities	Yes	Yes
• Assets listed above in your individual, joint, or spousal brokerage accounts managed accounts, IRAs, other retirement accounts, and/or other investment vehicles	Yes	Yes
Your dependent child's investment assets		
• Stocks	Yes	Yes
• Corporate or municipal bonds (exclude U.S. Treasury securities)	Yes	Yes
• commodity futures	Yes	Yes
• other investment securities	Yes	Yes
• Assets listed above in dependent child's <u>own</u> or UGMA brokerage account, IRAs, and/or other investment vehicles	Yes	Yes
Other investment assets irrespective of ownership		
• Real Property	No	Yes ²
• Mutual funds, exchange traded funds, 529 plans, index funds, and/or other "excepted investment funds" ³	No	Yes
• Any asset in which the transaction amount is \$1,000 or less	No	No
• Cash accounts (deposits and/or withdrawals) or certificates of deposit	No	No
• Money market accounts and mutual funds	No	No
• US Treasury securities (e.g., T bills, Treasury bonds, savings bonds)	No	No
• Federal government retirement accounts (e.g., Thrift Savings Plan)	No	No
• Life insurance and annuities	No	No
• Collectibles	No	No
• Assets held within an excepted trust ⁴	No	No
• Transfer of assets between you, your spouse, and your dependent children	No	No

Last updated November 2020

¹ This late fee is automatically imposed by law and is non-negotiable. You may request a waiver of any late filing fee from the Designated Agency Ethics Official or the Alternate DAEO if there are extraordinary circumstances. A fee waiver is at the sole discretion of the DAEO/ADAEO and is not subject to appeal. A filer who has unpaid late fees will be referred to the appropriate federal office or agency for debt collection procedures.

² Do not report the purchase or sale of your personal residence on Part 7 unless you rent it out at any time during the reporting period.

³ To be an excepted investment fund (EIF), the asset must be:

- (a) widely held (more than 100 participants),
- (b) independently managed – arranged so that you neither exercise control nor have the ability to exercise control over the financial interests held by the fund, and
- (c) publicly traded (or available) or widely diversified.

Managed accounts, investment clubs, trusts, 529 accounts, brokerage accounts, and individual retirement accounts (IRAs) are not excepted investment funds in and of themselves. It may be that individual assets held within these types of investment vehicles may qualify as EIFs if, for example, your IRA holds a publicly-traded mutual fund. But the fact that you have a managed account does not absolve you of your reporting requirements. That account is legally owned by you, and you're responsible for its assets and reporting transactions. If you have questions, contact ethics@epa.gov.

⁴ OGC/Ethics must determine that your trust qualifies as an “excepted trust.” For help, email ethics@epa.gov.

From: [Fugh, Justina](#)
To: [Harris, Sincere](#); [Utech, Dan](#); [Cassady, Alison](#); [Hoffer, Melissa](#); [Hamilton, Lindsay](#); [Chaudhary, Dimple](#); [Adhar, Radha](#); [Fox, Radhika](#); [Enobakhare, Rosemary](#); [Fine, Philip](#); [Katims, Casey](#); [Arroyo, Victoria](#); [Lucey, John](#); [Goffman, Joseph](#); [Carbonell, Tomas](#)
Cc: [OGC Ethics](#); [Payne, James \(Jim\)](#)
Subject: your ethics obligations ... briefing materials, references and the pledge
Date: Friday, January 22, 2021 2:04:00 PM
Attachments: [Biden Ethics Pledge for digital signature.pdf](#)
[Ethics Briefing Packet for Political Appointees.pdf](#)

Hi there,

Thank you all for attending your initial ethics briefing on Thursday, January 21, 2021. All of us in OGC/Ethics appreciate your attentiveness and interest. Attached is the briefing material we promised you that includes information about your transaction reporting obligations, the form to use for notification of negotiation for non-federal employment, a handy Hatch Act chart, and a one-pager on embedding ethics in your calendaring process. The packet also includes a pdf of the Biden Executive Order on "Ethic Commitments" for your reference. And I have attached separately the Biden Ethics Pledge for you to sign digitally and return to ethics@epa.gov.

So what about your financial disclosure report? Well, I'm not ready for you to work on that if you haven't yet started. I need to set up new accounts for you using your EPA email addresses, then will send you a new email with instructions. I know that some of you already started your reports that were assigned to your personal email address, which is fine. That information is saved and will be transferred over to your new accounts under your EPA email addresses. Try to find something to occupy your time over the next day or so (ha!), and then you can spend a leisurely and frustrating time with the public financial disclosure report a bit later, once you get the email from me. Each of you will have a contact on the OGC/Ethics team to help you navigate your form and any ethics concerns you may have. Our contact information is included on the first page of your briefing material. We are all always just a call or an email away.

Happy Friday!

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

ETHICS PLEDGE

I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.

Accordingly, as a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

1. *Lobbyist Gift Ban.* I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.
2. *Revolving Door Ban — All Appointees Entering Government.* I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.
3. *Revolving Door Ban — Lobbyists and Registered Agents Entering Government.* If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 *et seq.*, or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 *et seq.*, within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:
 - (a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;
 - (b) participate in the specific issue area in which that particular matter falls; or
 - (c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.
4. *Revolving Door Ban — Appointees Leaving Government.* If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.
5. *Revolving Door Ban — Senior and Very Senior Appointees Leaving Government.* If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections' implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment, I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by (a) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.
6. *Revolving Door Ban — Appointees Leaving Government to Lobby.* In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.
7. *Golden Parachute Ban.* I have not accepted and will not accept, including after entering Government, any salary or other cash payment from my former employer the eligibility for and payment of which is limited to individuals accepting a position in the United States Government. I also have not accepted and will not accept any non-cash benefit from my former employer that is provided in lieu of such a prohibited cash payment.
8. *Employment Qualification Commitment.* I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.
9. *Assent to Enforcement.* I acknowledge that the Executive Order entitled "Ethics Commitments by Executive Branch Personnel," issued by the President on January 20, 2021, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.

Signature _____

_____, 20____
Date

Name (Type or Print): _____

Ethics Briefing

1. The Ethics Program at the Environmental Protection Agency

You have ethics officials in the Office of General Counsel who can assist you:

Jim Payne Designated Agency Ethics Official (202) 564-0212 payne.james@epa.gov	
Justina Fugh Alternate Agency Ethics Official and Director of Ethics Office (202) 564-1786 fugh.justina@epa.gov	
Shannon Griffo Ethics Attorney (202) 564-7061 griffo.shannon@epa.gov	Margaret Ross Ethics Officer (202) 564-3221 ross.margaret@epa.gov
Jennie Keith Ethics Officer (202) 564-3412 keith.jennie@epa.gov	Victoria Clarke Ethics Attorney 202-564-1149 clarke.victoria@epa.gov
Ferne Mosley Ethics Attorney (202) 564-8046 mosley.ferne@epa.gov	OGC/Ethics All Staff and Helpline (202) 564-2200 ethics@epa.gov

You can also visit the [OGC/Ethics SharePoint site](#) for more information.

2. The General Principles of Ethical Conduct

As public servants, we have a duty to ensure that every citizen has complete confidence in the integrity of the United States and that we are not putting personal or private interests ahead of the public trust. There are 14 principles that form your [basic obligation of public service](#) that we'll address in this briefing material.

3. The President's Executive Order (for political appointees only)

On January 20, 2021, President Biden issued an Executive Order that includes an ethics pledge you must sign as a condition of your appointment. You are agreeing to a broader "ethics in government" plan to restore and maintain public trust in government, so please review the preamble carefully. The significant points of the pledge itself are described below:

If you were a federally registered lobbyist or registered foreign agent in the past 2 years:

- For the next 2 years, do not participate in any particular matter on which you lobbied or were registrable for under the Foreign Agents Registration Act within the previous 2 years and do not participate in the specific issue area in which that particular matter falls.
- Do not seek or accept employment with any government agency that you lobbied or engaged in registrable activity under FARA within the past 2 years.

While you are a federally employee:

- Do not accept any gifts from a registered lobbyist, including attendance at a widely attended gathering. There are a few exceptions (e.g., preexisting personal relationship, discount or benefit available to all government employees) but check with an ethics official for guidance.
- For 2 years from the date of your appointment, do not participate in any particular matter involving specific parties that is directly and substantially related to your former employer or former clients, including regulations and contracts.
 - Note: The definition of *former employer* excludes the federal government, state or local governments, D.C., Native American tribes, U.S. territories or possessions, or any international organization in which the U.S. is a member state. But under the federal impartiality rules, you will still have a one-year cooling off period with those entities (except if your former employer was already the US government).
- Any hiring or other employment decisions that you make will be based on the candidate's qualifications, competence and experience.
- Do not accept any salary or cash payment or any other non-cash benefit from a former employer for entering into government service.

When you leave federal service, you are agreeing to the following:

- If you are a "senior employee" subject to the one-year cooling off period under 18 U.S.C. § 207(c), your cooling off period will be extended by another year, for a total of two years.
- If you are a "senior employee" subject to either 18 U.S.C. § 207(c) or (d), for one year following your departure from federal service, you will not work behind the scenes to materially assist others in making communications or appearances to the United States Government that you would otherwise be unable to make under the post-employment restrictions.
- You will not lobby any covered executive branch official or non-career SES appointee for the remainder of this Administration or for 2 years following the end of your appointment, whichever is later.
- You will not engage in any activity on behalf of a foreign government or foreign political party

that would require you to register under the Foreign Agents Registration Act for the remainder of this Administrator or 2 years following the end of your appointment, whichever is later.

A copy of the Executive Order and the Biden Ethics Pledge that you must sign are included in this packet of materials.

4. Financial Disclosure Reporting

In your position, you are required to complete a public financial disclosure report as you begin the federal service and every year thereafter. You will file this report in INTEGRITY, an electronic system managed by the Office of Government Ethics. When you leave EPA, you will be required to submit a termination financial disclosure report. In addition, you are required to have one hour of ethics training as a new entrant (PAS appointees have an additional requirement for a specialized one-on-one ethics briefing), and also required to have one hour of ethics training each year. The Ethics Office in the Office of General Counsel (OGC/Ethics) provides your training either in person or virtually.

You must report any transaction of securities (stocks or bonds) over \$1000 on a periodic basis in INTEGRITY using the 278T. These periodic transactions must be reported the earlier of 30 days after learning of the transaction or 45 days after the transaction takes place. Failure to file timely results in late fees that are assessed as a matter of law.

In addition, you are required to notify OGC/Ethics within three days of beginning to negotiate for employment with any non-federal entity. To do so, use our Notification of Negotiation form.

Included in this packet of materials are reminders about the types of transactions that are to be reported periodically and not being tardy in filing any reports with OGC/Ethics.

5. Attorney Client Privilege & FOIA

By regulation, disclosure by an employee to an ethics official is not protected by the attorney-client privilege. 5 C.F.R. § 2635.107(b). This means that if our records (or yours) are requested under the Freedom of Information Act (FOIA), then we will not be able to redact our advice to you using the attorney-client privilege. However, we can -- and do -- assert personal privacy and deliberative process privileges where applicable. For example, the deliberative process privilege may apply to pre-decisional ethics advice documents, but please note that our final advice to you is generally releasable.

This should **not** stop you from seeking the advice of your ethics officials! Not only does it show you are being a steward of the public trust, but good faith reliance on advice received from your ethics officials after disclosing all relevant facts can shield you from disciplinary action and is a factor that the Department of Justice considers when deciding which cases they wish to prosecute.

6. Conflicts of Interest

Do not participate as an agency official in any matter if there is an actual conflict of interest or even the appearance of a conflict of interest. It's a crime to participate *personally and substantially* in *any particular matter* in which, to your knowledge, you or a person whose interests are imputed to you has a financial interest if the particular matter will have a *direct and predictable effect* on that interest.

Example: you own a lot of stock in XYZ Corporation, which is a chemical manufacturer. If your office is considering taking an enforcement action against XYZ Corporation, you must disqualify yourself from participating in the decision. Even if your mother gave your 10-year old twins the stock, you can't participate in the matter because their interest is imputed to you.

Remember, the interests of your spouse, dependent children, general business partner, and any organization in which you serve as officer, director, trustee or employee are imputed to you. This means that, under the criminal statute, it's the same thing as if you held those assets. So, you can't participate in any particular matter that may have a financial impact on the interests that are imputed to you.

7. Appearance of a Loss of Impartiality

Even if an action is not strictly prohibited, it is prudent to be careful of any action that a reasonable person with knowledge of the relevant facts may perceive as a violation of the ethics rules, or (if applicable) your ethics pledge and the Executive Order. You must avoid even the appearance of a loss of impartiality when performing official duties.

When we consider impartiality, we expand the ambit of relationships beyond the conflicts realm of "imputed interests." We consider all of your "covered relationships," which includes a lot more people: anybody with whom you have a business, contractual or financial relationship that is more than just a routine consumer transaction; any member of your household or a relative with whom you are close; the employer/partner or prospective employer/partner of your spouse, parent or dependent child; any person or organization for which you have served in the last year as an officer, agent, employee, etc.; and any organization in which you are an active participant.

You should refrain from engaging in official acts that may be perceived as an "appearance problem" by a reasonable person (and the reasonable person is not you, but rather your ethics officials).

Ethics officials can provide advice and determine whether a proposed course of action is appropriate by issuing an impartiality determination, but we cannot provide cover if you have already done the deed.

8. No representation back to the federal government

As a federal employee, you are prohibited from representing the interest of any other entity back to the federal government, whether you are paid for those services or not. For the purposes of these criminal statutes, 18 U.S.C. §§ 203 and 205, it does not matter that you are representing the interests of another in your private capacity. You cannot serve as agent or attorney for another entity back to the United States on a particular matter in which the US is a party or has a direct and substantial interest.

9. Acceptance of Gifts

Be careful of any gift from people outside the Agency, particularly those that are worth more than \$20. Gifts are anything of value and include allowing others to pick up the lunch tab, free tickets, invitations to receptions, and lovely fruit baskets. There are only a few exceptions, so consult your ethics officials before accepting any gift. Remember, political appointees can't take gifts from federally registered lobbyists.

EPA does not have broad Agency gift authority, so prohibited gifts must be paid for or returned. You should also not generally accept gifts exceeding \$10 from EPA employees, nor give gifts exceeding \$10 to your superiors. There are some exceptions, so check with an ethics official. By the way, you may give gifts to any EPA person who makes less money than you provided that person is not your supervisor.

10. Attendance at Widely-Attended Gatherings (ethics check required)

Your ethics official must make a written determination in advance as to whether your participation and attendance at certain events meet the criteria for a "widely attended gathering" exception of the gift rule. You can't make that determination yourself (nor can the sponsor of the event). For a WAG determination, your ethics official will consider the type of event, who is attending, and whether your attendance will further an Agency interest. This analysis must be done in writing and in advance of your attending the event. Any WAG that is approved is considered a gift to you, so you will be responsible for reporting the value of the gift on your financial disclosure report if it exceeds the reporting threshold. For political appointees, though, please bear in mind that this exception does not apply to federally registered lobbyists. Political appointees cannot accept free attendance at a widely attended gathering that is sponsored by or hosted by a federally registered lobbyist.

IMPORTANT NOTE about Embedding Ethics into Your Calendaring Process

Many ethics issues typically arise through the calendaring process of an EPA principal. Since you are responsible for your ethics obligations, we know you might need a little help. To assist you in navigating calendar and invitation issues, the EPA Ethics Office offers specialized assistance to you and your front office staff to advise on invitations, gifts associated with those invitations, etc. Embedding ethics is a proactive counseling practice that brings together the Principals, their staff, and local Deputy Ethics Officials to establish a process for incorporating ethics vetting into your or the Principal's calendar. Contact Jennie Keith to get started!

11. Travel Issues

Approval of gifts of travel, lodging and meals from non-Federal sources for meetings and similar events must be obtained from OGC/Ethics prior to the event. You can't accept such offerings on your own! We have an electronic form that we use to process such requests, and we must report the approvals to the Office of Government Ethics twice a year. See <http://intranet.epa.gov/ogc/ethics/travel.htm> . Prior to the pandemic, OGC/Ethics accepted over \$1 million each year in discretionary travel paid by non-federal sources.

12. Preferential Treatment of Non-Federal Entities (Endorsement)

Be careful about showing preferential treatment to any entity. We cannot endorse the products, services or enterprises of another, so you need to be careful about extolling the virtues of a regulated entity, a particular contractor or applicant, etc. Seek ethics advice before collaborating with non-federal entities on initiatives and events because not all of EPA's statutes allow us to cooperate with non-feds.

13. Political Activities

You are now bound by the Hatch Act, which governs the political activity of federal employees, even in your personal capacity. Career SES employees are bound by even more restrictions, while Presidentially Appointed and Senate Confirmed (PAS) employees enjoy more liberties. Do not rely on what you think other people can do; find out for yourself by asking your ethics officials.

Some limitations under the Hatch Act are 24/7, meaning that you have restrictions even on your time. For example, you are never permitted to solicit, accept or receive political contributions, not even in your personal time. You can never use your EPA title or position to fundraise in connection with any political activity. Because the Hatch Act rules vary depending on your type of appointment, please see the attached chart and consult your ethics officials.

14. Lobbying Issues

EPA employees cannot use appropriated funds to engage in indirect or grassroots lobbying regarding any legislative proposal. Indirect or grassroots lobbying generally means urging members of special interest groups or the general public to contact legislators to support or oppose a legislative proposal. EPA employees cannot make explicit statements to the public to contact members of Congress in support of or in opposition to a legislative proposal. Other prohibited grassroots lobbying includes an employee's explicit request, while on official time, to an outside group asking it to contact Congress to support or oppose EPA's appropriations bill.

In addition, EPA is prohibited from using appropriated funds for activities that would "tend to promote" the public to contact Congress in support of or in opposition to a legislative proposal, even if an EPA employee does not expressly state that the public should contact Congress. This activity is considered "indirect lobbying" and is prohibited. You may, after coordinating with OCIR and Public Affairs, directly contact or lobby members of Congress and their staffs regarding the Administration's legislative proposals. Again, after getting approval from OCIR, you may also educate and inform the public of the Administration's position on legislative proposals by delivering speeches and making public remarks explaining the Administration's position on a legislative proposal.

15. Use of Government Personnel and Resources

EPA policy permits employees to “limited use” of government equipment, including the telephone, copying machines, fax machines, etc. Employees cannot, however, engage in outside activity or employment on government time. GSA regulations also prohibit any fundraising on federal property (except for the Combined Federal Campaign), so employees cannot raise money for their favorite charity (i.e., sell cookies, candy or wrapping paper for a “good cause”). They also cannot use the internet connection for gambling or to access pornography. See EPA’s [Limited Personal Use of Government Equipment Policy](#). Avoid using your EPA email address for personal matters, and do not use your personal email address for EPA matters.

16. Outside Activities

We were advised by the Biden Presidential Transition Team that non-PAS political appointees may have outside positions that are consistent with federal ethics regulations, including the Agency’s ethics regulations. Non-Career SES and Schedule C appointees must seek prior approval from EPA Ethics for certain outside activity consistent with EPA’s Supplemental Ethics Regulations at [5 C.F.R. § 6401.103](#). Examples of activity that require prior approval are practicing a profession or teaching, speaking or writing on subjects related to EPA programs, policies or operations. While there is a *de minimis* use of government equipment, that never applies to any compensated outside activity.

Most EPA employees may not receive any compensation for teaching, speaking or writing (including consulting) that relates in significant part to your assigned EPA duties, duties to which you’ve been assigned in the previous year, or to any ongoing Agency program, policy or operation. But if you are a non-career SES employee, then your restriction is even broader: you may not receive compensation at all for any teaching, speaking or writing that relates to your official duties or even to EPA’s general subject matter area, industry, or economic sector primarily affected by EPA’s programs and operations. [5 C.F.R. § 2635.807\(a\)\(2\)\(i\)\(E\)\(3\)](#).

Non-Career SESers must also abide by these additional restrictions:

- You are subject to the outside earned income cap that is set each January. As of January 2021, that amount is \$29,595. See [5 C.F.R. § 2635.804\(b\)](#) and [5 C.F.R. § 2636.304](#). This amount changes each year;
- You cannot receive compensation for practicing a profession that involves a fiduciary relationship; affiliating with or being employed by a firm or other entity that provides professional services involving a fiduciary relationship; or teaching without prior approval. See note to [5 C.F.R. § 2635.804\(b\)](#) and [5 C.F.R. § 2636.305](#);
- You may be permitted to serve as an officer or member of the board of any association, corporation or other entity, but cannot be compensated for such service. [See 5 C.F.R. § 2636.306](#); and
- You may not receive compensation for any other teaching unless specifically authorized in advance by OGC/Ethics (specifically, the Designated or Alternate Designated Agency Ethics Official listed on the first page of this briefing material). [See 5 C.F.R. § 2636.307](#).

17. Ethics Obligations of Supervisors

If you are a supervisor, you must model ethical behavior for your staff. Set forth below are your additional ethics responsibilities, found at [5 C.F.R. § 2638.103](#):

Every supervisor in the executive branch has a heightened personal responsibility for advancing government ethics. It is imperative that supervisors serve as models of ethical behavior for subordinates. Supervisors have a responsibility to help ensure that subordinates are aware of their ethical obligations under the [Standards of Conduct](#) and that subordinates know how to contact [agency ethics officials](#). Supervisors are also responsible for working with agency ethics officials to help resolve conflicts of interest and enforce government ethics laws and regulations, including those requiring certain employees to file financial disclosure reports. In addition, supervisors are responsible, when requested, for assisting agency ethics officials in evaluating potential conflicts of interest and identifying positions subject to financial disclosure requirements.

Your staff may ask you ethics questions, but unless you are an ethics official, you are not authorized to answer those ethics questions. If you receive an ethics question, then contact your own local Deputy Ethics Official or notify OGC/Ethics at ethics@epa.gov.

18. Seeking Employment

It's always odd to talk about seeking employment when we are welcoming you to EPA, but be mindful of the fact that there are restrictions that will apply. You won't be able to participate in a particular matter involving a party with which you are seeking employment, and that obligation starts as soon as you directly or indirectly contact a prospective employer, or as soon as you get a response expressing interest in you. You will need to disqualify yourself from particular matters that may affect the prospective employer.

19. Negotiating for Employment

Should your pursuit of future employment advance to "negotiating" for employment with a particular entity, then you will have conflicts of interest. The financial interests of any person or entity with whom you are "negotiating" for employment are imputed to you for the purposes of the criminal conflict of interest statute, 18 U.S.C. § 208. You will need to recuse yourself from participating in any particular matter that will have a direct and predictable effect upon the interests of the prospective employer, either as a specific party or as a member of a class, which will include particular matters that apply generally to the prospective employer's industry or class.

Filers of the public financial disclosure report are further subject to the Ethics In Government Act, as amended by the STOCK Act, which requires you to notify OGC/Ethics within three days of commencing negotiations for future employment with a non-federal employer. Yes, we have a form for that notification.

20. Post-Government Employment - Representational Restrictions

Even after you leave federal service, there are federal post-employment restrictions. Your pledge restrictions are supplementary to these restrictions. Your ethics officials are still available to answer your post-employment questions, even after you leave EPA. You will need to have an exit discussion with OGC/Ethics before you leave EPA, but here are the highlights of what we'll discuss regarding the federal law. You will also be bound by the additional restrictions of the Biden Ethics Pledge adumbrated on pp. 2-3 of this briefing material.

Lifetime bar - on particular matters that you worked on

You will be prohibited by criminal statute from representing back to the federal government on any particular matter involving specific parties in which you participated personally and substantially while in federal service. "Representation back" means making an appearance or communication, on behalf of another, with the intent to influence an official action. And the matter must involve the United States or be one in which the US has an interest.

Example: You are asked by XYZ Corporation to contact EPA about seeking an exemption so that a particular permit you granted while in your position no longer applies to them. You cannot do that because you worked on that matter while at EPA. You are permanently barred from representing another back to the federal government on that same matter.

2-year bar - on EPA matters pending during your last year in federal service

You are prohibited (again, by criminal statute) from representing back to the federal government on any particular matter involving specific parties that was pending under your official responsibility during your last year of federal service. Even if you recuse yourself from a matter, you are still bound by the two-year bar. You are not permanently restricted, since you didn't work on the matter personally and substantially, but you are prohibited from representing another back to the federal government on that matter for two years.

Senior Employee "cooling off restriction" – on any matter

Depending on your rate of pay, you may be considered a "senior official" and will be restricted for one year from making any contact with EPA following your departure (under the federal ethics regulation). Political appointees have additional time restrictions under the Biden Ethics Pledge. This prohibition is not limited to particular matters. Rather, you cannot knowingly make any communication or appearance to EPA employees on behalf of another with the intent to influence in connection with any matter in which you seek official EPA action.

Effective January 3, 2021, the defining rate of pay for "senior officials" is [\\$172,395 per year](#) (excluding locality pay). If you make more than that (before locality pay), then you are a "senior employee" and will be bound by the cooling off period. By the way, SESers do not get locality pay so, most likely, any SESer will be a "senior employee" and subject to this restriction.

Welcome to EPA and thank you for keeping ethics in the forefront of all we do!



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

January 22, 2021

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Timely filing of Public Financial Disclosure and Periodic Transaction Reports

FROM: Justina Fugh **Justina Fugh** Digitally signed by Justina Fugh
Date: 2021.01.22 12:07:49
-05'00'
Alternate Designated Agency Ethics Official

TO: All EPA Political Appointees

In 1978, Congress enacted the Ethics In Government Act, 5 U.S.C. app. to establish the Executive Branch financial disclosure reporting system that requires mandatory public disclosure of financial and employment information of certain officials and their immediate families. Because you occupy a designated position, you are required by this law to file these reports in the electronic system, *INTEGRITY*. As an executive branch employee, you are bound by federal ethics laws and regulations, including prohibitions against financial conflicts of interest and loss of impartiality. Your disclosures allow the Office of General Counsel's Ethics Office (OGC/Ethics) to assist you in identifying and addressing potential or actual conflicts of interest in order to maintain the integrity of the Agency's programs and operations. These reports are publicly available upon request and the reports of certain Presidential Appointees confirmed by the Senate will be posted on the U.S. Office of Government Ethics' website at www.oge.gov.

This memorandum formally informs you that you are required by law to file timely and accurate Public Financial Disclosure Reports (OGE 278e)¹ and Periodic Transaction Reports (OGE 278-Ts).² **Filing a late report will result in a \$200 late filing fee** unless you formally request and receive a waiver of the late fee from me or the Designated Agency Ethics Official (DAEO), Jim Payne, after describing extraordinary circumstances that caused you to file a late report.³ **Unpaid late fees are subject to the Agency's⁴ and the government's debt collection procedures and will be referred for collection if left unpaid after 30 days.**

Please refer to this chart for your filing obligations:

¹ See 5 U.S.C. app. § 101; 5 C.F.R. § 2634.201.

² Pub. L. 112-105 § 11 (STOCK Act).

³ See 5 U.S.C. app. § 104(d)(1); 5 C.F.R. § 2634.704(a).

⁴ See Resource Management Directive System 2540-03-P2 dated 07/12/2016.

OGE 278e - New Entrant reports	Within 30 days of entering a covered position (either by appointment to a permanent or acting in covered position)
OGE 278e – Incumbent reports	No later than May 15
OGE 278e – Termination reports	No later than 30 days after leaving a covered position (either through reassignment, resignation, or the end of acting in a covered position) (Reports may be submitted within 15 days prior to termination)
OGE 278T – Periodic transaction reports ⁵	The <i>earlier of</i> 30 days after learning of a transaction or 45 days of the transaction taking place.

How to request an extension of the filing deadline:

For good cause (e.g., travel, workload issues, sickness), you may request up to two 45-day extensions. Submit the request by email, including the reason, to ethics@epa.gov **prior to the due date**. Extensions cannot be granted after the due date has passed.

How to request the waiver of a late filing fee:

If *extraordinary circumstances* prevented you from meeting the deadline and OGC/Ethics assessed a late fee, you may request a waiver of the late fee. See 5 C.F.R. § 2634.704. Submit your request in writing to ethics@epa.gov describing the extraordinary circumstances and provide any supporting documentation. Please note that vacations or routine work obligations are not “extraordinary” circumstances. The decision to grant or deny a waiver is at the sole discretion of the DAEO/ADAEO and is final.

Your colleagues in OGC/Ethics are available to provide assistance but it is always your obligation to file your reports timely and accurately. In fact, ethics regulations *require* that we refer individuals to the Department of Justice (DOJ) when there is reasonable cause to believe that they have willfully failed to file a required report or provide the information that the report requires. The current maximum civil penalty is \$56,216.⁶

As public servants, we hope that you will take your ethics obligations seriously. As such, we expect you to make a good faith effort to adhere to the timeliness and completeness requirements of your financial disclosure reporting obligations. If you have any questions, please contact ethics@epa.gov.

ATTACHMENT - *When to Report Transactions on the OGE 278 and OGE 278-T*

⁵ See attached guidance – *When to Report Transactions on the OGE 278 and OGE 278-T*.

⁶ In 2012, OGC/Ethics referred an individual to DOJ for failure to file a termination report despite repeated reminders and entreaties. That individual paid a civil penalty of \$15,000 and still had to file the termination report.

When to Report Transactions

DUE DATE: The earlier of the following: 30 Days from Notification or 45 Days from Transaction

	Periodic Transaction Report	Annual and/or Termination Report
Investment Assets	Report on the OGE 278-T?	Report on Part 7 of the OGE 278e?
Transactions of \$1,000 or less		
• Any asset in which the transaction amount is \$1,000 or less regardless of the type of asset or who owns the asset	No	No
Your investment assets (or jointly held)		
• Your stocks	Yes	Yes
• Your bonds (except U.S. Treasury securities)	Yes	Yes
• Your commodity futures	Yes	Yes
• Your other investment securities	Yes	Yes
• Assets listed above in your (joint) brokerage accounts, (joint) managed accounts, IRAs, other retirement accounts, and/or other (joint) investment vehicles	Yes	Yes
Your spouse's investment assets		
• Spouse's stocks	Yes	Yes
• Spouse's bonds (except U.S. Treasury securities)	Yes	Yes
• Spouse's commodity futures	Yes	Yes
• Spouse's other investment securities	Yes	Yes
• Assets listed above in spouse's <u>own</u> brokerage account, managed accounts, IRAs, other retirement accounts, and/or other investment vehicles	Yes	Yes
Your dependent child's investment assets		
• Dependent child's stocks	Yes	Yes
• Dependent child's bonds (except U.S. Treasury securities)	Yes	Yes
• Dependent child's commodity futures	Yes	Yes
• Dependent child's other investment securities	Yes	Yes
• Assets listed above in dependent child's <u>own</u> brokerage account, IRAs, and/or other investment vehicles	Yes	Yes
Other investment assets irrespective of ownership		
• Real Property	No	Yes ¹
• Mutual funds, exchange traded funds, index funds and/or other "excepted investment funds" ²	No	Yes
• Any asset in which the transaction amount is \$1,000 or less	No	No
• Cash accounts (deposits and/or withdrawals)	No	No
• Money market accounts	No	No
• Money market funds	No	No
• Certificates of deposits	No	No
• US Treasury Securities (e.g., T bills, Treasury bonds, U.S. savings bonds)	No	No
• Federal Government Retirement Accounts (e.g., Thrift Savings Plan)	No	No
• Life insurance and annuities	No	No
• Collectibles	No	No
• Assets held within an excepted trust ³	No	No
• Transfer of assets between you, your spouse, and your dependent children	No	No

¹ Do not report the purchase or sale of your personal residence on Part 7 unless you rent it out at any time during the reporting period.

² To be an excepted investment fund (EIF), the asset must be:

- (a) widely held (more than 100 participants),
- (b) independently managed – arranged so that you neither exercise control nor have the ability to exercise control over the financial interests held by the fund, and
- (c) publicly traded (or available) or widely diversified.

Managed accounts, investment clubs, trusts, 529 accounts, brokerage accounts, and individual retirement accounts (IRAs) are not excepted investment funds in and of themselves. It may be that individual assets held within these types of investment vehicles may qualify as EIFs if, for example, your IRA holds a publicly-traded mutual fund. But the fact that you have a managed account does not absolve you of your reporting requirements. That account is legally owned by you, and you're responsible for its assets and reporting transactions. If you have questions, contact ethics@epa.gov.

³ OGC/Ethics must determine that your trust qualifies as an “excepted trust.” For help, email ethics@epa.gov.

REQUIREMENT: Notify OGC/Ethics within 3 business days of commencing the negotiation or agreement for post-government employment or compensation

NOTIFICATION OF NEGOTIATION OR AGREEMENT

Your full name

Your telephone number*

Date negotiation or agreement began

Your Title / Office / AAship or Region

Your email address*

Name of non-federal entity that you are negotiating with or have an agreement for employment or compensation

** Provide information for OGC/Ethics to use to contact you as part of our official duty. For this purpose, you may provide a personal email address or cell number.*

RECUSAL STATEMENT

To assist in identifying your recusal obligations, check the appropriate boxes below:

- | | Yes | No | |
|----|--------------------------|--------------------------|---|
| 1. | <input type="checkbox"/> | <input type="checkbox"/> | EPA's programs, policies, or operations affect the non-federal entity with which I am seeking employment. |
| 2. | <input type="checkbox"/> | <input type="checkbox"/> | My office in EPA does work that affects the non-federal entity with which I am seeking employment. |
| 3. | <input type="checkbox"/> | <input type="checkbox"/> | The work I participate in affects or will affect the non-federal entity with which I am seeking employment. |

Need help answering these statements?
See page 2.

For as long as I am negotiating for, or have an agreement of, employment or compensation with the entity listed above, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of this entity, unless I first obtain from OGC/Ethics a written authorization or waiver consistent with 5 C.F.R. § 2635.605 or 18 U.S.C. § 208(b)(1). I understand that it is my responsibility to consult with OGC/Ethics if I have questions regarding my recusal obligations.

Sign and submit to ethics@epa.gov:

Your signature

OGC/Ethics Use Only:

Statement 1: EPA’s programs, policies, or operations affect the non-federal entity with which I am seeking employment.

If your answer is “yes” to any of the following questions, then you must answer “yes” to statement 1.

- Is the non-federal entity seeking official action from EPA (even if not your own office)?
- Does the non-federal entity do business or seek to do business with the EPA (even if not your own office)?
- Does the non-federal entity conduct activities that EPA regulates (even if not in your own office)?
- Does the non-federal entity have interests that may be substantially affected by the performance or non-performance of your official duties?
- Is the non-federal entity a membership organization in which the majority of the members are described in the preceding questions?

Statement 2: My office in EPA does work that affects the non-federal entity with which I am seeking employment.

To answer this question, think about the nexus between the work of your office and the non-federal entity. The closer the nexus, the more likely you will have to check “yes” to statement 2.

- Consider the particular matters your office works on and whether there is any connection to the work of this entity. Does your office work on permits, investigations, litigation, grants, licenses, contracts, applications, enforcement cases, or other similar types of matters where there is an identified non-federal entity (i.e., particular matters involving specific parties)?
- Also consider whether your office is involved in scientific programs, media programs, or other types of policies, procedures, guidance documents, regulations, etc., that would affect this particular industry or sector (i.e., particular matters of general applicability).

Statement 3: The work I participate in affects or will affect the non-federal entity with which I am seeking employment.

Think about the nexus between your work and the non-federal entity as well as its respective class, industry or sector. The closer the nexus between your work and the sector the non-federal entity belongs to, the more likely you will check have to check “yes” to statement 3.

- Will the work you do affect the sector? Don’t concentrate on whether your personal contributions will be determinative but rather, overall, how the outcome of the work itself will affect the sector and the non-federal entity with which you are negotiating.
- Do you advise on or consult with your colleagues’ projects and work? Does their work affect this sector or the non-federal entity?
- Do you actively supervise or assign work to subordinates? Do those assignments affect the sector or the non-federal entity?

Need help answering these statements? Contact ethics@epa.gov to discuss.

Political Activities and Federal Employees

The Hatch Act, enacted in 1939, was amended in 1993 and 2012. It regulates the political activities of executive branch employees, excluding the President and Vice President. The following table summarizes what political activities EPA employees can and cannot do based on their appointment. Note: Public Health Service officers must adhere to 45 CFR Part 73, Subpart F, which is most similar to the Career SES/ALJ column.

Political activity means an activity “directed toward the success or failure of a political party, a candidate for partisan political office, or a partisan political group.”

Type of Activity	PAS*	Non-Career SES, Schedule C*, Title 42, SL/ST, AD*, GS, Other	Career SES, ALJs
Personal (off premises and off duty)			
Express support for or opposition to a political candidate when off duty	Yes	Yes	Yes
Run as a partisan candidate for nomination or office in a partisan election	No	No	No
Solicit and accept contributions for your campaign in a non-partisan election	Yes	Yes	Yes
Solicit a contribution from a member of your union	N/A	Yes	N/A
Work a phone bank asking individuals to volunteer	Yes	Yes	No
Campaign on behalf of a candidate in a partisan election	Yes	Yes	No
Be active on behalf of a candidate at political rallies or meetings	Yes	Yes	No
Attend political rallies and meetings	Yes	Yes	Yes
Contribute money to political organizations	Yes	Yes	Yes
Work in non-partisan voter registration drives	Yes	Yes	Yes
Work in partisan voter registration drives	Yes	Yes	No
Register and vote	Yes	Yes	Yes
Sign a nominating petition	Yes	Yes	Yes
Distribute campaign material in a partisan election	Yes	Yes	No
Work as an election judge, poll watcher, clerical worker on election day and receive compensation for that work	Yes	Yes	Yes but nonpartisan only
Drive people to polling station on behalf of a campaign	Yes	Yes	No
Affecting Official Resources			
Use office time for political activity	Yes; IG-No	No	No
Use official space for political activity in general	Yes; IG-No	No	No
Fundraising			
Attend a political fundraiser	Yes	Yes	Yes
Solicit, accept or receive political contributions in general	No	No	No
Solicit or receive a political contribution on government premises	No	No	No
Plan or organize a political fundraiser when off duty	Yes	Yes	No
Sponsor, host, or allow your name as sponsor/host for a political fundraiser	No	No	No
Serve drinks or check coats at a political fundraiser	Yes	Yes	No
Speak at a partisan fundraiser without appealing for money	Yes	Yes	No
Allow only your name to be listed as speaker on fundraising invitation	Yes	Yes	No

*PAS = Political Appointee Confirmed by the Senate; Schedule C = political appointees not confirmed by Senate; AD = Administratively Determined; SES = Senior Executive Service

EPA Ethics Program

Counseling Practice Area:

Vetting Invitations

Quick Summary:

One of the more visible ways ethics issues arise are those that come up during the calendaring of events and invitations for an EPA principal and their immediate staff. The ethics issues run the whole gambit:

Recusal Obligations ♦ Gifts ♦ Fundraising ♦ Political Activity ♦ Endorsements
President's Ethics Pledge ♦ Misuse of Position

Embedding ethics is a proactive counseling practice that brings together the Principals, their immediate staff, and Deputy Ethics Officials to establish a process for incorporating ethics vetting into the Principal's calendar. This helps and supports the EPA principal to meet their ethics obligations and maintain integrity of agency programs and operations.

Who:

Principals (Administrator, Deputy Administrator, Assistant Administrators, and Regional Administrators, certain Deputy Associate Administrators), their immediate staff, and Deputy Ethics Officials.

What:

Preventing conflicts of interest and other ethics issues by embedding ethics review into the calendaring process for principals.

When:

Upon the appointee's start of EPA service

Where:

Through coordination in the principal's front office and immediate staff

Why:

Principals and other political appointees encounter frequent ethics issues arising through acceptance of external events, travel, and meetings with external participants. With increased public scrutiny and ethics legal frameworks, this is a high risk area in the ethics program. It is the principal's responsibility to avoid ethics issues and to maintain public trust in government.

How:

To navigate these ethics issues, we establish a process, use standard event information gathering forms, and train periodically, so a principal's front office can obtain all relevant information for an event and ethics officials can advise appropriately and timely prior to acceptance.

Executive Order on Ethic Commitments by Executive Branch Personnel

JANUARY 20, 2021 • [PRESIDENTIAL ACTIONS](#)

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and sections 3301 and 7301 of title 5, United States Code, it is hereby ordered as follows:

Section 1. Ethics Pledge. Every appointee in every executive agency appointed on or after January 20, 2021, shall sign, and upon signing shall be contractually committed to, the following pledge upon becoming an appointee:

“I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.

“Accordingly, as a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

“1. Lobbyist Gift Ban. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.

“2. Revolving Door Ban — All Appointees Entering Government. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

“3. Revolving Door Ban — Lobbyists and Registered Agents Entering Government. If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 et seq., or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 et seq., within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:

(a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;

(b) participate in the specific issue area in which that particular matter falls; or

(c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.

“4. Revolving Door Ban — Appointees Leaving Government. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.

“5. Revolving Door Ban — Senior and Very Senior Appointees Leaving Government. If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections’ implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment, I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by (a) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.

“6. Revolving Door Ban — Appointees Leaving Government to Lobby. In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.

“7. Golden Parachute Ban. I have not accepted and will not accept, including after entering Government, any salary or other cash payment from my former employer the eligibility for and payment of which is limited to individuals accepting a position in the United States Government. I also have not accepted and will not accept any non-cash benefit from my former employer that is provided in lieu of such a prohibited cash payment.

“8. Employment Qualification Commitment. I agree that any hiring or other employment decisions I make will be based on the candidate’s qualifications, competence, and experience.

“9. Assent to Enforcement. I acknowledge that the Executive Order entitled ‘Ethics Commitments by Executive Branch Personnel,’ issued by the President on January 20, 2021, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.”

Sec. 2. Definitions. For purposes of this order and the pledge set forth in section 1 of this order:

(a) “Executive agency” shall include each “executive agency” as defined by section 105 of title 5, United States Code, and shall include the Executive Office of the President; provided, however, that “executive agency” shall include the United States Postal Service and Postal Regulatory Commission, but shall exclude the Government Accountability Office.

(b) “Appointee” shall include every full-time, non-career Presidential or Vice-Presidential appointee, non-career appointee in the Senior Executive Service (or other SES-type system), and appointee to a position that has been excepted from the competitive service by reason of being of a confidential or policymaking character (Schedule C and other positions excepted under comparable criteria) in an executive agency. It does not include any person appointed as a member of the Senior Foreign Service or solely as a uniformed service commissioned officer.

(c) “Gift”:

(i) shall have the definition set forth in section 2635.203(b) of title 5, Code of Federal Regulations;

(ii) shall include gifts that are solicited or accepted indirectly, as defined in section 2635.203(f) of title 5, Code of Federal Regulations; and

(iii) shall exclude those items excluded by sections 2635.204(b), (c), (e)(1) and (3), and (j) through (l) of title 5, Code of Federal Regulations.

(d) “Covered executive branch official” and “lobbyist” shall have the definitions set forth in section 1602 of title 2, United States Code.

(e) “Registered lobbyist or lobbying organization” shall mean a lobbyist or an organization filing a registration pursuant to section 1603(a) of title 2, United States Code, and in the case of an organization filing such a registration, “registered lobbyist” shall include each of the lobbyists identified therein.

(f) “Lobby” and “lobbied” shall mean to act or have acted as a registered lobbyist.

(g) “Lobbying activities” shall have the definition set forth in section 1602 of title 2, United States Code.

(h) “Materially assist” means to provide substantive assistance but does not include providing background or general education on a matter of law or policy based upon an individual’s subject matter expertise, nor any conduct or assistance permitted under section 207(j) of title 18, United States Code.

(i) “Particular matter” shall have the same meaning as set forth in section 207 of title 18, United States Code, and section 2635.402(b)(3) of title 5, Code of Federal Regulations.

(j) “Particular matter involving specific parties” shall have the same meaning as set forth in section 2641.201(h) of title 5, Code of Federal Regulations, except that it shall also include any meeting or other communication relating to the performance of one’s official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties.

(k) “Former employer” is any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner, except that “former employer” does not include any executive agency or other entity of the Federal Government, State or local government, the District of Columbia, Native American tribe, any United States territory or possession, or any international organization in which the United States is a member state.

(l) “Former client” is any person for whom the appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment, but excluding instances where the service

provided was limited to speeches or similar appearances. It does not include clients of the appointee's former employer to whom the appointee did not personally provide services.

(m) "Directly and substantially related to my former employer or former clients" shall mean matters in which the appointee's former employer or a former client is a party or represents a party.

(n) "Participate" means to participate personally and substantially.

(o) "Government official" means any employee of the executive branch.

(p) "Administration" means all terms of office of the incumbent President serving at the time of the appointment of an appointee covered by this order.

(q) "Pledge" means the ethics pledge set forth in section 1 of this order.

(r) "Senior White House staff" means any person appointed by the President to a position under sections 105(a)(2)(A) or (B) of title 3, United States Code, or by the Vice President to a position under sections 106(a)(1)(A) or (B) of title 3.

(s) All references to provisions of law and regulations shall refer to such provisions as are in effect on January 20, 2021.

Sec. 3. Waiver. (a) The Director of the Office of Management and Budget (OMB), in consultation with the Counsel to the President, may grant to any current or former appointee a written waiver of any restrictions contained in the pledge signed by such appointee if, and to the extent that, the Director of OMB certifies in writing:

(i) that the literal application of the restriction is inconsistent with the purposes of the restriction; or

(ii) that it is in the public interest to grant the waiver. Any such written waiver should reflect the basis for the waiver and, in the case of a waiver of the restrictions set forth in paragraphs 3(b) and (c) of the pledge, a discussion of the findings with respect to the factors set forth in subsection (b) of this section.

(b) A waiver shall take effect when the certification is signed by the Director of OMB and shall be made public within 10 days thereafter.

(c) The public interest shall include, but not be limited to, exigent circumstances relating to national security, the economy, public health, or the environment. In determining whether it is in the public interest to grant a waiver of the restrictions contained in paragraphs 3(b) and (c) of the pledge, the responsible official may consider the following factors:

- (i) the government's need for the individual's services, including the existence of special circumstances related to national security, the economy, public health, or the environment;
- (ii) the uniqueness of the individual's qualifications to meet the government's needs;
- (iii) the scope and nature of the individual's prior lobbying activities, including whether such activities were de minimis or rendered on behalf of a nonprofit organization; and
- (iv) the extent to which the purposes of the restriction may be satisfied through other limitations on the individual's services, such as those required by paragraph 3(a) of the pledge.

Sec. 4. Administration. (a) The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish such rules or procedures (conforming as nearly as practicable to the agency's general ethics rules and procedures, including those relating to designated agency ethics officers) as are necessary or appropriate to ensure:

- (i) that every appointee in the agency signs the pledge upon assuming the appointed office or otherwise becoming an appointee;
- (ii) that compliance with paragraph 3 of the pledge is addressed in a written ethics agreement with each appointee to whom it applies, which agreement shall also be approved by the Counsel to the President prior to the appointee commencing work;
- (iii) that spousal employment issues and other conflicts not expressly addressed by the pledge are addressed in ethics agreements with appointees or, where no such agreements are required, through ethics counseling; and
- (iv) that the agency generally complies with this order.

(b) With respect to the Executive Office of the President, the duties set forth in section 4(a) of this order shall be the responsibility of the Counsel to the President.

(c) The Director of the Office of Government Ethics shall:

(i) ensure that the pledge and a copy of this order are made available for use by agencies in fulfilling their duties under section 4(a) of this order;

(ii) in consultation with the Attorney General or the Counsel to the President, when appropriate, assist designated agency ethics officers in providing advice to current or former appointees regarding the application of the pledge; and

(iii) in consultation with the Attorney General and the Counsel to the President, adopt such rules or procedures as are necessary or appropriate:

(A) to carry out the foregoing responsibilities;

(B) to authorize limited exceptions to the lobbyist gift ban for circumstances that do not implicate the purposes of the ban;

(C) to make clear that no person shall have violated the lobbyist gift ban if the person properly disposes of a gift as provided by section 2635.206 of title 5, Code of Federal Regulations;

(D) to ensure that existing rules and procedures for Government employees engaged in negotiations for future employment with private businesses that are affected by the employees' official actions do not affect the integrity of the Government's programs and operations;

(E) to ensure, in consultation with the Director of the Office of Personnel Management, that the requirement set forth in paragraph 6 of the pledge is honored by every employee of the executive branch;

(iv) in consultation with the Director of OMB, report to the President on whether full compliance is being achieved with existing laws and regulations governing executive branch procurement lobbying disclosure. This report shall include recommendations on steps the executive branch can take to expand, to the fullest extent practicable, disclosure of both executive branch procurement lobbying and of lobbying for Presidential pardons. These recommendations shall include both immediate actions the executive branch can take and, if necessary, recommendations for legislation; and

(v) provide an annual public report on the administration of the pledge and this order.

(d) The Director of the Office of Government Ethics shall, in consultation with the Attorney General, the Counsel to the President, and the Director of the Office of Personnel Management, report to the President on steps the executive branch can take to expand to the fullest extent practicable the revolving door ban set forth in paragraph 5 of the pledge to all executive branch employees who are involved in the procurement process such that they may not for 2 years after leaving Government service lobby any Government official regarding a Government contract that was under their official responsibility in the last 2 years of their Government service. This report shall include both immediate actions the executive branch can take and, if necessary, recommendations for legislation.

(e) All pledges signed by appointees, and all waiver certifications with respect thereto, shall be filed with the head of the appointee's agency for permanent retention in the appointee's official personnel folder or equivalent folder.

Sec. 5. Enforcement. (a) The contractual, fiduciary, and ethical commitments in the pledge provided for herein are solely enforceable by the United States pursuant to this section by any legally available means, including debarment proceedings within any affected executive agency or judicial civil proceedings for declaratory, injunctive, or monetary relief.

(b) Any former appointee who is determined, after notice and hearing, by the duly designated authority within any agency, to have violated his or her pledge may be barred from lobbying any officer or employee of that agency for up to 5 years in addition to the time period covered by the pledge. The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish procedures to implement this subsection, which procedures shall include (but not be limited to) providing for fact-finding and investigation of possible violations of this order and for referrals to the Attorney General for consideration pursuant to subsection (c) of this order.

(c) The Attorney General is authorized:

(i) upon receiving information regarding the possible breach of any commitment in a signed pledge, to request any appropriate Federal investigative authority to conduct such investigations as may be appropriate; and

(ii) upon determining that there is a reasonable basis to believe that a breach of a commitment has occurred or will occur or continue, if not enjoined, to commence a civil action against the former employee in any United States District Court with jurisdiction to consider the matter.

(d) In any such civil action, the Attorney General is authorized to request any and all relief authorized by law, including but not limited to:

(i) such temporary restraining orders and preliminary and permanent injunctions as may be appropriate to restrain future, recurring, or continuing conduct by the former employee in breach of the commitments in the pledge he or she signed; and

(ii) establishment of a constructive trust for the benefit of the United States, requiring an accounting and payment to the United States Treasury of all money and other things of value received by, or payable to, the former employee arising out of any breach or attempted breach of the pledge signed by the former employee.

Sec. 6. General Provisions. (a) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order and other dissimilar applications of such provision shall not be affected.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN JR.

THE WHITE HOUSE,
January 20, 2021.

From: [Utech, Dan](#)
To: [Fugh, Justina](#)
Cc: [Willis, Sharnett](#)
Subject: RE: UPDATE: question about outside activities for non-career SESers
Date: Wednesday, March 03, 2021 3:59:13 PM

Hi Justina – I'm fine with playing this role. I would like to have a conversation with you about it first, however. So let's find a time, perhaps early next week. That work? If so, Sharnett can find a slot for us. Best, Dan

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Wednesday, March 3, 2021 2:46 PM
To: Utech, Dan <Utech.Dan@epa.gov>
Subject: UPDATE: question about outside activities for non-career SESers

Hi Dan,

It looks like there is fourth anticipated request for approval of outside activity from a non-career SESer, so I wanted to re-send this message to be sure you have a chance to review it.

Thanks,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Fugh, Justina
Sent: Monday, March 01, 2021 12:04 PM
To: Utech, Dan <[Utech.Dan@epa.gov](#)>
Subject: question about outside activities for non-career SESers

Hi Dan,

The Biden White House has determined that, like Schedule C appointees, non-career SES appointees will be permitted to hold outside positions. Previous administrations (stretching back over the 15 years that I've been the ethics counsel) have not been as willing to do so. Just so you know, though, PAS appointees are always prohibited from any outside activity. We have received three informal requests for approval of outside activity for non-career SES appointees. I am writing to check in about your role in reviewing these requests.

Here are the OUTSIDE ACTIVITY RULES FOR NON-CAREER SESers –

- Whether compensated or uncompensated, must seek prior approval in writing by sending an email that meets the requirements of 5 CFR 6401.103 through the supervisor to OGC/Ethics
- Cannot receive any compensation for practicing a profession that involves a fiduciary relationship (e.g., law, insurance, medicine, financial services, architecture, accounting)
 - Also cannot be affiliated with or permit use of name in connection with any entity that provides professional services involving a fiduciary relationship
- Cannot receive any compensation for serving as an officer or member of any outside board
 - Can serve in an uncompensated capacity on personal time

Cannot receive compensation for any teaching, speaking or writing that deals with the general subject matter area, industry or economic sector primarily affected by the programs and operations of the Agency

- For any teaching unrelated to Agency's mission, must seek prior written approval from the Designated Agency Ethics Official
- There is a cap on how much compensation any non-career SES may accept in a calendar year from all sources
 - For 2021, the cap is \$29,595, applied on a pro rata basis
 - For example, if a non-career SES wants to teach a ten-week course on stamp collecting, she cannot earn more than \$5676.75.

See, e.g., 5 C.F.R. § 2635.804(b), § 2635.807(a)(2)(i)(E)(3), and 5 CFR Part 2636).

Here are the three requests that have been mentioned:

- CARLTON WATERHOUSE wishes to teach in a compensated capacity a property law class to 1Ls at Howard University;
- (b) (6) [REDACTED]
- [REDACTED]

Each of these situations could be approved by OGC/Ethics, with appropriate ethics advice, after the concurrence of the supervisor. In the past, the Chief of Staff has concurred as the "supervisor" for all Schedule C appointees who sought outside positions. That practice was particularly useful when an appointee wanted to pursue an outside activity – such as political consulting – that was permissible under the ethics rules but may have given rise to external scrutiny. Please also note that we do get regular FOIA requests for any approved outside activity for political appointees.

Are you willing to serve as the "supervisor" for all political outside activity requests we may receive? And, if so, are you okay with our moving forward with these three requests or would you like more information about the facts or our likely ethics counseling?

Thanks,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF THE
ADMINISTRATOR

MEMORANDUM

SUBJECT: Updated Recusal Statement

FROM: Dan Utech DAN UTECH
Chief of Staff

Digitally signed by DAN
UTECH
Date: 2021.08.05
07:35:08 -04'00'

TO: Michael S. Regan
Administrator

I have consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and President Biden's Ethics Pledge that I signed. This recusal statement supersedes my April 12, 2021 recusal statement.

FINANCIAL CONFLICTS OF INTEREST

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I have consulted with OGC/Ethics and been advised that I do not currently have any financial conflicts of interest. I will remain vigilant and notify OGC/Ethics immediately should my financial situation change.

OBLIGATIONS UNDER EXECUTIVE ORDER 13989

Pursuant to Section 1, Paragraph 2 of the Executive Order, I understand that I am prohibited from participating in any particular matter involving specific parties in which my former employer – **Yale University** -- or any of my former clients -- the **Energy Foundation**,

the **Center for Applied Environmental Law and Policy**, and **Clean Wisconsin** -- is a party or represents a party. For the purposes of the Executive Order, I had no other “former clients” to whom I provided consulting services while self-employed as a consultant, and my consultancy is in abeyance and not taking on any new clients. I understand that my recusals regarding Yale University; the Energy Foundation; the Center for Applied Environmental Law and Policy; and Clean Wisconsin will last for two years from the date that I joined federal service. These recusals will end after January 20, 2023.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means that the meeting should include a multiplicity of parties. If, for example, there is “a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client.”¹ Should a question arise as to whether a specific forum qualifies as “open to all interested parties,” then I will consult with OGC/Ethics.

SCREENING ARRANGEMENT

In order to ensure that I do not participate in matters relating to any of the entities listed above, I will instruct Alison Cassady, Deputy Chief of Staff for Policy, to assist in screening EPA matters directed to my attention that involve my former employer or my former clients. All inquiries and comments involving the entities or issue areas on my recusal list should be directed to the Deputy Chief of Staff for Policy without my knowledge or involvement.

If the Deputy Chief of Staff for Policy determines that a particular matter will directly involve any of the entities on my recusal list, then she will refer it for action or assignment to another, without my knowledge or involvement. In the event that she is unsure whether an issue is a particular matter from which I am recused, then she will consult with OGC/Ethics for a determination. I will provide a copy of this memorandum to my principal subordinates and a copy to Justina Fugh, Director, Ethics Office.

UPDATE AS NECESSARY

In consultation with OGC/Ethics, I will revise and update my recusal statement whenever warranted by changed circumstances, including changes in my financial interests, changes in my personal or business relationships, or any changes to my EPA duties. In the event of any changes, I will provide a copy of the revised recusal statement to you and OGC/Ethics.

cc: Alison Cassady, Deputy Chief of Staff for Policy
Dorien Blythers, Deputy Chief of Staff for Operations
Wes Carpenter, Acting Deputy Chief of Staff
Justina Fugh, Director, Ethics Office

From: [Olorunnipa, Funmi B. EOP/WHO](#)
To: [Fugh, Justina](#)
Subject: (b) (5)
Date: Tuesday, April 27, 2021 3:32:00 PM

Thank Justina. (b) (5)

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Tuesday, April 27, 2021 1:42 PM
To: Olorunnipa, Funmi B. EOP/WHO (b) (6) (b) (6)
Subject: (b) (5)

Hi there,

(b) (5)

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Fugh, Justina](#)
To: (b) (6)
Subject: (b) (5)
Date: Sunday, May 02, 2021 11:07:00 PM
Attachments: (b) (5)

Hi there,

(b) (5)
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(b) (5)
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[Redacted]
[Redacted]
[Redacted]

Please let me know if you want to follow up or have any questions.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Fugh, Justina](#)
To: [Griffo, Shannon](#)
Subject: (b) (5)
Date: Sunday, May 02, 2021 11:09:00 PM
Attachments: (b) (5)

Hi,

(b) (5)
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(b) (5)

Justina

From: Fugh, Justina
Sent: Sunday, May 02, 2021 11:08 PM
To: (b) (6)
Subject: (b) (5)

Hi there,

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Please let me know if you want to follow up or have any questions.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Fugh, Justina](#)
To: [Utech, Dan](#)
Subject: (b) (5)
Date: Sunday, May 02, 2021 10:58:00 PM

Hi Dan,

I am writing to notify you (b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Olorunnipa, Funmi B. EOP/WHO (b) (6) (b) (6)
Sent: Tuesday, April 27, 2021 3:31 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: (b) (5)

Thank Justina. (b) (5)

(b) (5)

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Tuesday, April 27, 2021 1:42 PM
To: Olorunnipa, Funmi B. EOP/WHO (b) (6) (b) (6)
Subject: (b) (5)

Hi there,

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The majority of the page content is redacted with black bars. There are five horizontal bars of varying lengths in the top section, followed by a single bar in the middle section.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Recusal Statement

FROM: Marianne Engelman-Lado
Deputy General Counsel for Environmental Initiatives

EngelmanLado, Marianne

Digitally signed by
EngelmanLado, Marianne
Date: 2021.06.30
17:03:47 -04'00'

TO: Melissa Hoffer
Acting General Counsel

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and the Biden Ethics Pledge that I signed, as well as my own attorney bar obligations.

OBLIGATIONS UNDER EXECUTIVE ORDER 13989

Pursuant to Section 1, Paragraph 2 of Executive Order 13989, I understand that I am prohibited from participating in any particular matter involving specific parties in which a former employer or former client is a party or represents a party. Set forth in the charts below are my former employers and former clients identified in consultation with OGC/Ethics that have or may have environmental interests that could potentially arise with respect to my duties here at EPA.¹ I understand that my recusal with these entities will last for two years from the date that I joined federal service. This recusal will end **January 31, 2023**.

Former Employer
Vermont Law School Yale University Poverty & Race Research Action Council WE ACT for Environmental Justice African American Policy Forum Center for Public Representation

¹ For any former client that is not listed, I understand that I am personally obliged not to participate in specific party matters involving that former client for the duration of my ethics obligations.

Former Client ²
<p>Ashurst Bar/Smith Community Organization Californians for Renewable Energy Center for Whole Communities Citizens for Alternatives to Radioactive Dumping Clean Power Lake County Community Action Works Concerned Citizens of West Baden Community EarthJustice Friends of the Earth North Carolina Climate Solutions Coalition North Carolina Environmental Justice Network REACH Sierra Club St. Croix Environmental Association Limetree Bay SEA St. Francis Prayer Center Waterkeeper Alliance</p>

The Executive Order provides more restrictions than the federal ethics rules, but I am advised by OGC/Ethics that the additional restrictions contained in the Executive Order regarding former employer do not apply to me for my former client, the University of Vermont. The definition of “former employer” excludes an entity of a state government, including a state university.³ Therefore, OGC/Ethics has confirmed that I am not subject to the additional Executive Order restrictions regarding former clients for the University of Vermont.

On April 14, 2021, EPA’s Designated Agency Ethics Official, in consultation with the Counsel to the President, granted me a limited waiver of the provisions of Section 1, Paragraph 2 of Executive Order 13989 for one of my former clients, the Natural Resources Defense Council (NRDC). Similarly, on June 24, 2021, EPA’s Alternate Designated Agency Ethics Official issued an impartiality determination with respect to my former client, NRDC, under 5 C.F.R. 2635.502(d). I am now authorized to participate in specific party matters arising at EPA in which my former client, NRDC, is a party or represents a party, provided that I did not previously participate personally and substantially in that same matter for NRDC or any other party. *See Attachments.*

² Natural Resources Defense Council (NRDC) is not included here as a “former client” because of the April 14, 2021 Ethics Pledge waiver that I received, as well as the June <date>, 2021 impartiality determination. I was, however, recused from participating in specific party matters in which NRDC was a party from my entry into EPA until April 14, 2021, and I remain recused from any specific party matters in which NRDC is a party if I participated personally and substantially previously in that same matter.

³ *See* Exec. Order 13989, Section 2(k) and Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

I have been advised by OGC/Ethics that, for the purposes of my pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means that the meeting should include a multiplicity of parties. If, for example, there is “a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client.”⁴ Should a question arise as to whether a specific forum qualifies as “open to all interested parties,” then I will consult with OGC/Ethics.

OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS

Pursuant to the federal impartiality standards, I understand that I have a “covered relationship” with a former client, which is a state university. Therefore, I may not participate in a particular matter involving specific parties in which **University of Vermont** is a party or represents a party, unless I am authorized to participate by OGC/Ethics pursuant to 5 C.F.R. § 2635.502(d). My recusal lasts for one year from the day I last provided services, which is **January 31, 2022**.

Pursuant to the federal ethics rules, I understand that I have a covered relationship with my spouse and his employer, Northwell Health. *See* 5 C.F.R. § 2635.502(b)(1)(ii)-(iii). I will recuse from specific party matters where my spouse or Northwell Health is a party or represents a party, unless I am otherwise authorized by OGC/Ethics to participate, pursuant to 5 C.F.R. § 2635.502(d).

FINANCIAL CONFLICTS OF INTEREST

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I have consulted with OGC/Ethics and been advised that I do not currently have any financial conflicts of interest. I will remain vigilant and notify OGC/Ethics immediately should my financial situation change.

⁴ *See* Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

ATTORNEY BAR OBLIGATIONS

In addition to the pledge restrictions involving my former employers and clients, I understand that I am bound by my bar rules and am obliged to protect the confidences of my former clients. I understand that I am restricted from switching sides in litigation in which I participated in or provided counsel or that is the same as or substantially related to the same specific party matter in which I previously participated personally and substantially, unless my bar provides for and I first obtain informed consent and coordinate with OGC/Ethics. Set forth below are the cases pending at EPA in which I participated and from which I am recused for the entirety of my tenure at EPA:

CASE DESCRIPTION / SUBJECT MATTER	CASE CITATION
Litigation challenging EPA's enforcement of Title VI.	<i>Californians for Renewable Energy v. EPA</i> , case no. 4:15-cv-03292-SBA
Freedom of Information Request regarding ECRCO's docket.	EPA-2021-000375
Opposition to a Plantwide Applicability Limit permit decision.	In re: Limetree Bay Terminals, L.L.C. and Limetree Bay Refining, L.L.C., C.A.A. Appeals No.20-02M
Complaint alleging discrimination in violation of Title VI and 40 C.F.R. Part 7, related to the New Mexico Environmental Department's issuance of a treatment, storage, and disposal permit.	EPA File No. 09R-02-R6
Complaint alleging discrimination in violation of Title VI and 40 C.F.R. Part 7 related to the Texas Commission on Environmental Quality's failure to provide effective public notice and access to TCEQ's programs.	TCEQ 02NO-20-R6
Complaint alleging discrimination in violation of Title VI and 40 C.F.R. Part 7 related to the City of Flint's administration of the Safe Drinking Water act and failure to implement procedures for addressing compliance with EPA's non-discrimination regulation.	City of Flint 19RD-16-R5

Complaint alleging discrimination in violation of Title VI and 40 C.F.R. Part 7 related to Genesee County's administration of the Safe Drinking Water act and failure to implement procedures for addressing compliance with EPA's non-discrimination regulation.	Genesee County 18RD-16-R5
FOIA appeal of a request for records related to an EPA investigation of North Carolina's Department of Environmental Quality handling of CAFOs.	FOIA Appeal No. EPA-HQ-2020-001148

DIRECTIVE AND CONCLUSION

To avoid my participating in any of the matters from which I am recused, please refer those matters to the attention of **Jim Payne, Deputy General Counsel for Environmental Media and Regional Law Offices**, without my knowledge or involvement. In the event that my circumstances change, e.g., my financial interests or my covered relationships, then I will consult with OGC/Ethics and update my recusal statement accordingly.

cc: Dimple Chaudhary, Deputy General Counsel for Nationwide Resource Protection Programs
Jim Payne, Deputy General Counsel for Environmental Media and Regional Law Offices
Elise Packard, Deputy General Counsel for Operations
OGC Associates and Directors
Regional Counsels
Daniel Conrad, Acting Associate Deputy General Counsel

Attachments



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Limited Waiver from Section 1, Paragraph 2 of Executive Order 13989

FROM: James Payne **JAMES PAYNE**
Deputy General Counsel for Environmental Media and Regional Law Offices,
and Designated Agency Ethics Official

TO: Marianne Engelman-Lado
Deputy General Counsel for Environmental Initiatives

Digitally signed by JAMES
PAYNE
Date: 2021 04.14
13:21:48 -04'00'

Pursuant to the authority delegated under Section 3 of Executive Order 13989 (January 20, 2021), and after consultation with the Counsel to the President, I hereby grant you a limited waiver from the requirements of Section 1, paragraph 2 of the Executive Order. I certify that this limited waiver is necessary and in the public interest to permit you to participate in certain particular matters in which your former client, the National Resources Defense Council (NRDC), is a party or represents a party, provided that you did not previously participate personally and substantially in the matter with NRDC or any other party.

BACKGROUND

On January 20, 2021, President Biden signed Executive Order 13989, "Ethics Commitments by Executive Branch Personnel," which includes an Ethics Pledge. The Ethics Pledge imposes ethics requirements beyond federal ethics laws and regulations and attorney bar obligations. All individuals appointed to political positions on or after January 20, 2021 are required to sign the Ethics Pledge, which sets forth the "former client"¹ restriction at Section 1, paragraph 2:

I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

You entered federal service at EPA effective January 31, 2021 and received your initial

¹ A "former client" is defined as "any person for whom the appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment, but excluding instances where the service provided was limited to speeches or similar appearances. It does not include clients of the appointee's former employer to whom the appointee did not personally provide services." Executive Order 13989, Section 2(l).

ethics training on February 4, 2021, the same day you signed the Ethics Pledge. You have properly recused yourself from participating in any particular matter in which your former employers or any of your former clients is a party or represents a party. The EPA has identified, however, an interest in having you work on particular matters involving one of your former clients – namely, NRDC -- for which you will require a pledge waiver as set forth in Section 3 of Executive Order 13989. Such waivers from the restrictions contained in Section 1, paragraph 2 may be granted upon certification either that the literal application of the restriction is inconsistent with the purpose of the restriction or that it is in the public interest to grant the waiver. With the approval of the White House, the Acting Director of the Office of Management and Budget (OMB) has delegated to each executive branch Designated Agency Ethics Official the authority to exercise Section 3 waiver authority after consultation with the Counsel to the President.²

ANALYSIS

Your career has been devoted to civil rights and environmental justice. Prior to joining the Biden Administration, you directed an Environmental Justice (EJ) Clinic at Vermont Law School that trains students in community lawyering and civil rights enforcement in the environmental justice context, and also served as Lecturer at both the Yale University School of Public Health and the Yale School of the Environment, where you supervised interdisciplinary teams of law, environmental, and public health students working on climate justice issues.

Your experience also includes ten years as General Counsel at New York Lawyers for the Public Interest (NYLPI), a non-profit civil rights law firm, where you directed a legal and advocacy program addressing racial and ethnic disparities in access to health care, environmental justice, and disability rights. You began your legal career as a staff attorney at the NAACP Legal Defense and Educational Fund, Inc. (LDF), where you represented clients attempting to break barriers of access to health care and quality education. You recently served as co-chair of the Equity and Environmental Justice Working Group of Connecticut's Governor's Council on Climate Change, and as a board member of both WE ACT for Environmental Justice and the Center for Public Representation. You have lectured widely and taught graduate, law, and undergraduate level courses. You also hold a B.A. in government from Cornell University, a J.D. from the University of California at Berkeley, and an M.A. in Politics from Princeton University.

PREVIOUS INVOLVEMENT IN FOIA CASES WITH NRDC

During the two-year period prior to your federal appointment, on behalf of the EJ Clinic you directed (first at Yale University and then at Vermont Law School), you and co-counsel Southern Environmental Law Center submitted requests for certain EPA records pursuant to the Freedom of Information Act (FOIA). These FOIA requests were made on behalf of three client groups that included NRDC. This limited waiver applies only to NRDC.

² See Office of Government Ethics Legal Advisory, LA-21-04 (Feb. 18, 2021).

The requests asked for information related to EPA's Title VI of the Civil Rights Act of 1964 (Title VI) docket, including complaints, acknowledgments, jurisdictional decisions, referrals and any dispositive decisions. Upon release of EPA's responsive records, the student team under your supervision reviewed the documents and discussed legal options in consultation with co-counsel and at the direction of the clients. Approximately four FOIA requests were submitted on behalf of these client groups, the first of which was in 2017 while you were at Yale University. You received no compensation specifically for this FOIA-related work that was distinct from your salary provided by your employers for running and supervising a clinic and serving as faculty. Although there were follow-up conversations with employees in EPA's External Civil Rights and Compliance Office (ECRCO) within the Office of General Counsel (OGC), they were limited to the FOIA response. There have been no legal challenges, appeals or litigation related to these FOIA requests.

YOUR OFFICIAL DUTIES ON BEHALF OF EPA

OGC serves as the chief legal advisor to the EPA Administrator and implements the nation's environmental laws. OGC also provides legal counsel to EPA policymakers and represents the Agency in court challenges to agency actions. In your position as Deputy General Counsel for Environmental Initiatives, you have responsibilities within OGC for the External Civil Rights Compliance Office, the Civil Rights and Finance Law Office, and the Pesticides and Toxic Substances Law Office (PTSLO). PTSLO is responsible for legal issues and related litigation for the Office of Chemical Safety and Pollution Prevention (OCSPP) in connection with OCSPP's regulatory efforts addressing pesticides and toxic chemicals governed respectively by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Toxic Substances Control Act (TSCA). Similarly, PTSLO also provides legal support for OCSPP related to the Pollution Prevention Act (PPA) and the Toxics Release Inventory (TRI), the program under the Emergency Planning and Community Right-To-Know Act (EPCRA) that informs citizens about toxic releases in their communities. NRDC is frequently involved in these regulatory areas and is often named as a party to the litigation that PTSLO addresses.

In the position of Deputy General Counsel for Environmental Initiatives, your participation in the review and direction of substantive environmental legal matters under FIFRA, TSCA, and TRI is critical to PTSLO's effectiveness in these areas. Although EPA currently has two other political appointees in OGC, both have their own bar and pledge obligations to observe with respect to matters arising in PTSLO. Consequently, there is an overlap of recusals that is impinging the ability of OGC to interact with our political leadership in certain nationally significant issues related to public health and the environment that are important priorities of the Administration. With respect to the other OGC political appointees, one is recused because NRDC is her "former employer" for purposes of Executive Order 13989, while the other appointee is recused given prior involvement as an employee in a State government. Your restriction is due solely to prior service in discrete and limited situations that are unrelated to FIFRA, TSCA and TRI.

For the two years prior to your EPA appointment, the services you personally provided to NRDC were limited to those Title VI-related FOIA requests. You did not provide advice or counsel to NRDC or otherwise enter into an attorney-client relationship with them and received

no compensation from them. The nature of your previous affiliation with NRDC does not relate in any way to their involvement in non-Title VI matters, such as OCSPP litigation or regulatory actions, arising at EPA. During the time period relevant to Section 1, paragraph 2 of the Ethics Pledge, you had no involvement on behalf of NRDC with the types of litigation PTSLO handles.

CONCLUSION

In your position as the Deputy General Counsel for Environmental Initiatives, you must be able to advise senior leadership, including the Administrator, and provide legal counsel and vital input into the Agency's programs and litigations that address pesticides and toxic chemicals. Your prior involvements with NRDC was limited in scope and focused only on a handful of FOIA requests.

For the reasons set forth above, I grant you a limited waiver of the provisions of Section 1, paragraph 2 of Executive Order 13989 to enable you to effectively carry out your duties as Deputy General Counsel of Environmental Initiatives; to ably advise senior leadership, including the Acting General Counsel, and the Administrator; and to advance the interests of the Agency. The services you provided to NRDC, during the two years prior to your federal appointment were limited to discrete Title VI FOIA requests. I have determined that it is in the public interest for you to participate in certain specific party matters involving this former client due to your critical role and responsibilities associated with PTSLO. I find that the nature of your previous Title VI work should not restrict your ability to provide your legal counsel, vital input, and toxics expertise on litigation related to the Agency's pesticides and toxic chemicals program.

This limited waiver encompasses any such specific party matters arising at EPA where NRDC is a party or represents a party, and you did not previously participate personally and substantially while serving as an attorney for them or any other party. You are allowed to participate in those specific party matters, including meetings or communications relating to your official duties, where NRDC is present. However, you will remain recused from those specific party matters, including Title VI matters and FOIA requests, in which your former client is a party or if you participated personally and substantially previously. This limited waiver does not otherwise affect your obligations to comply with all other applicable federal ethics laws and regulations and provisions of Executive Order 13989, as well as your own attorney bar obligations.

cc: Dana Remus, Counsel to the President



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Specific Party Matters
Involving the Natural Resources Defense Council

FROM: Justina Fugh Digitally signed by Justina Fugh
Date: 2021.06.24
22:33:48 -04'00'
Alternate Designated Agency Ethics Official and
Director, Ethics Office

TO: Marianne Engelman-Lado
Deputy General Counsel for Environmental Initiatives

Prior to entering federal service on January 31, 2021, you directed two environmental justice clinics --first at Yale University and then at Vermont Law School – both of which provided legal services to clients and trained law students in community lawyering and civil rights enforcement. As part of the Vermont Law School environmental justice clinic, you and co-counsel Southern Environmental Law Center (SELC) submitted requests for certain EPA records pursuant to the Freedom of Information Act (FOIA) on behalf of several clients, including the Natural Resources Defense Council (NRDC).

Because NRDC was a “former client” of yours for federal ethics purposes and under Executive Order 13989, you could not participate in any specific party matter involving this entity unless you first sought and obtained ethics approval. The Designated Agency Ethics Official granted you a waiver from the Executive Order on April 14, 2021, and this memorandum formally confirms my impartiality determination granted orally on that same date.

NEED FOR A PLEDGE WAIVER

Pursuant to Executive Order 13989, you signed the Ethics Pledge and are prohibited from participating in specific party matters in which your former employer or former client (as defined in Section 2, paragraphs (k) and (l)) is a party or represents a party. Mindful of the fact that you had previously provided limited legal services to NRDC solely in the context of FOIA, and given the Agency’s interest in having your participation in environmental matters with NRDC that are unrelated to FOIA, the EPA sought a waiver of the provisions of Section 1, paragraph 2 of the Executive Order on your behalf. This limited waiver, which was granted on April 14, 2021, authorized you to participate personally and substantially in specific party matters arising at EPA in which your former client, NRDC, is a party, provided that you did not previously participate personally and substantially in that same matter for NRDC or any other party. *See attachment.*

NEED FOR IMPARTIALITY DETERMINATION

What remains is an impartiality concern under the federal ethics rules set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, Subpart E, “Impartiality in Performing Official Duty.” For one year from the date you last provided services to NRDC, you have a “covered relationship” with them pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). Absent an impartiality determination from me, you still cannot participate in any specific party matter in which NRDC is a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a). Although I granted this determination informally previously, I am confirming it in writing now.

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee’s participation outweighs concern over the questioning of the “integrity of the agency’s programs and operations.” 5 C.F.R. § 2635.502(d). The factors that EPA takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee’s role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee’s duties that would reduce or eliminate the likelihood that a reasonable person would question the employee’s impartiality.

Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate as Deputy General Counsel for Environmental Initiatives in specific party matters in which NRDC is a party, provided that you did not participate personally and substantially in the matter previously with NRDC or any other party. In making this determination to enable you to effectively carry out your duties as a Deputy General Counsel and to advance the interests of the Agency, I have taken the following factors into consideration:

Nature of the relationship involved – Your career has been devoted to civil rights and environmental justice. After graduating with your B.A. in government from Cornell University, a J.D. from the University of California at Berkeley, and an M.A. in Politics from Princeton University, you served as a staff attorney at the NAACP Legal Defense and Educational Fund, Inc., where you represented clients attempting to break barriers of access to health care and quality education. You also served for ten years as General Counsel at New York Lawyers for the Public Interest (NYLPI), a non-profit civil rights law firm, where you directed a legal and advocacy program addressing racial and ethnic disparities in access to health care, environmental justice, and disability rights. In addition to lecturing and teaching about environmental justice, you also directed environmental justice clinics at Vermont Law School and Yale University.

Throughout your career, you have represented individual clients and nonprofits alike on a broad array of environmental law and environmental justice issues. Although NRDC frequently interacts with the Agency on regulatory matters and in litigation, I note that your own previous affiliation with NRDC was limited in scope. As set forth in the Biden pledge waiver issued on April 14, 2021, your previous service to NRDC was limited to FOIA requests on Title VI inquiries only, not related to any actual or underlying Title VI matters. In fact, you did not otherwise serve as the attorney of record for NRDC. Therefore, your prior relationship with NRDC does not weigh against you for the purposes of this factor.

Effect of the matter upon your financial interest – NRDC did not compensate you directly for your services; instead, any financial remuneration was paid to your former employer, Vermont Law School. You do not have a financial conflict of interest with the Vermont Law School.¹

Nature and importance of the employee's role – In addition to serving as the chief legal advisor to EPA and implementing the nation's environmental laws, the Office of General Counsel also provides legal counsel to EPA policymakers and represents the Agency in defense of agency actions. In the position of a Deputy General Counsel, you must be able to advise senior leadership and provide legal counsel and vital input into the Agency's programs and litigations, including those that address pesticides and toxic chemicals among other areas. Your invaluable knowledge and experience are of great importance in advocating the interests of the Agency and in advising the Acting General Counsel and Administrator.

Sensitivity of the matter – We anticipate that specific party matters in which NRDC is a party and that did not involve you personally and substantially may arise during your EPA tenure that will merit your attention and participation because they raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Although EPA currently has two other political appointees in OGC, both have their own bar and pledge obligations to observe with respect to matters arising in the Office of General Counsel. Consequently, there is an overlap of recusals that is impinging the ability of the Office of General Counsel to interact with its political leadership on certain nationally significant issues related to public health and the environment that are important priorities of the Administration. With respect to the other political appointees, one is recused because NRDC is her "former employer" for purposes of Executive Order 13989, while the other appointee is recused given prior service as an employee in a State government. Your participation as part of your official duties as a Deputy General Counsel is of importance to the continued functioning and continuity of the Office of General Counsel and, therefore, is in the Agency's interests.

Under this limited authorization, you may participate personally and substantially in specific party matters that involve NRDC, so long as they are not the very same specific party matters on which you worked personally and substantially for NRDC or any other party. You will be allowed to participate in these specific party matters, including meetings or communications related to your official duties, where NRDC is present. However, you will

¹ See note to 5 C.F.R. § 2640.201(c).

remain recused from those specific party matters, including Title VI matters and FOIA requests, in which your former client is a party or if you participated personally and substantially previously. You will otherwise fully comply with the remainder of the requirements imposed by the Executive Order 13989 and with all applicable federal ethics laws and regulations, as well as your own attorney bar obligations.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact me at fugh.justina@epa.gov or (202) 564-1786.

Attachment

cc: Melissa Hoffer, Acting General Counsel
Dimple Chaudhary, Deputy General Counsel for Nationwide Resource Protection
Jim Payne, Deputy General Counsel for Environmental Media and Regional Law Offices
Elise Packard, Deputy General Counsel for Operations Programs
OGC Associates and Directors
Regional Counsels
Daniel Conrad, Acting Associate Deputy General Counsel